

54200980      Sex      ###-##  
Student ID      SSN

UNIVERSITY  
OF MIAMI

06/12/2022

Sanchez, Josceline



CORAL GABLES, FLORIDA 33124

Other Institutions Attended

Miami Dade College Wolfson  
Inst Research Rm 5601-11  
300 Ne 2Nd Ave  
Miami, FL 33132-2204  
Miami Coral Park Senior Hs  
8865 Sw 16Th St  
Miami, FL 33165-7802

External Degrees

Miami Dade College Wolfson  
ASSOCIATE OF ARTS    2016/04/30

Beginning of Graduate Record

Summer 2020

NDG Graduate Business  
Graduate Business Non-Degree Course of Study

Course	Course Title	Attempted	Earned	Grade	Qty Pts
ACC 650	ACC INTERNSHIP	3.000	3.000	A	12.000
Instructor:	Daniel Medina				
			Earned Credits	Graded Credits	Qty Pts
UM Semester GPA	4.000    UM Semester Totals		3.000	3.000	12.000
UM Cum GPA	4.000    UM Cumulative Totals		3.000	3.000	12.000

End of Undergraduate & Graduate



June 13, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I'm writing to recommend Josceline Sanchez for a clerkship in your chambers. To be very honest, Josceline is a diamond in the rough. She came from a humble background: she is the daughter of undocumented immigrants from El Salvador and has close friends and family who have been convicted of serious criminal offenses. She came to law school with a bit of survivor's guilt and has dedicated herself to the study of law in order to work for the public's interest. Compared to other Columbia Law students, Josceline has required more mentoring (but not to a burdensome level). Because she is able to receive forthright feedback and genuinely wants to improve, she has flourished in law school. Her transcript begins with B/B+ average her 1L year and has risen to an A/A- average by her 2L year, which I believe demonstrate her true capabilities.

One of my best decisions last year was to hire Josceline as a TA for my Criminal Law course. Along with my other TAs, Josceline held weekly review sessions and provided written feedback on two writing assignments. In addition, I relied on Josceline in particular for her sense of how well the students were following along in class and how I might teach differently. We had a particularly thoughtful conversation after the class on sexual assault, a topic that I taught for the first time this year (so Josceline did not learn it when she took Criminal Law). She raised the really good point, which wasn't brought up in class, that many perpetrators of sexual violence may have been raised in violent and abusive households and may also have been victims themselves. This is just one of many examples of Josceline's ability to humanize the law and the study of law.

Another example is her Note. Josceline identified her research topic after asking her community contacts what problems they were facing, because she wanted to write a Note that would be helpful to them. Her Note on the constitutional argument for the right to education in state prisons is creative and ambitious as a proposal for reform, which reveals a capacious legal mind. Josceline's main challenge was figuring out how to organize everything she had researched into a concise paper. It took her a few drafts (as it does for many writers), and in the process, her writing improved dramatically.

With the right mentors, Josceline's potential is endless. I truly believe that Josceline would thrive as a law clerk. Please do not hesitate to contact me if you have any questions. It would be my pleasure to be of any assistance.

Sincerely,

Sarah A. Seo

Sarah Seo - as2607@columbia.edu

June 12, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

It is a pleasure to recommend Josceline Sanchez for a clerkship in your chambers. I first met Josceline when she took my Legislation & Regulation course in the Fall of 2021, and her impressive performance has stayed with me. In a lecture hall of 148 students, Josceline stood out as one of the best-prepared and most thoughtful participants. She brought to class, to office hours, and to her written work an intellectual rigor and passion from which her peers and her teacher greatly benefitted. Furthermore, it was obvious to those around Josceline that her illuminating engagement was driven by a desire not to score points, but to get to the heart of what it means to serve the public interest – whether as an administrator, a litigator, or a judge. As a result, Josceline's fellow students listened to her well-chosen interventions with real curiosity and respect; she lent both clarity and gravity to our discussions.

In light of Josceline's facility in the lecture hall and office hours, I was not surprised to find that she had written one of the finest exams in the class. This exam was an eight-hour take-home, featuring a long, difficult issue spotter and an essay question. Josceline's answer to the issue spotter was masterful. Even many of the best students tend to miss certain subsidiary administrative actions – such as front-line enforcement actions prior to administrative appeals – but Josceline did not. Her answer displayed total control of the ins and outs of the administrative decision-making and a veteran's appreciation for how the case law applies differently in different procedural settings. For the essay question, students could choose to write either on the use of clear statement rules in statutory interpretation, or on the merits of restricting judicial review of agency action to procedural and constitutional validity, as opposed to substantive and interpretive validity. Most students chose the first topic, but Josceline chose the second, and tackled it with creativity and nuance.

I was lucky enough to have Josceline in class again in the Spring of 2022 in Advanced Administrative Law, a course I co-teach with Chuck Sabel. The course's focus is administrative agencies' growing reliance on guidance (as opposed to rulemaking), and the challenges that this development poses for reviewing courts – as well as for defenders of the legitimacy of the administrative state. We ask students to work through a wealth of empirical and theoretical scholarship, and to revisit canonical cases, such as *State Farm* and *Chevron*, in light of the guidance revolution. Josceline was a crucial participant in this year's iteration of the course, bringing her legal acumen, her mature appreciation of normative trade-offs, and her experience as a CPA to bear on the material. Her contributions were unique and transformative.

As the foregoing suggests, I have no doubt that Josceline would be a winning addition to your chambers, and recommend her most highly. Please do not hesitate to contact me if I can provide you with further information.

Thank you for your consideration, and best wishes,

Jeremy Kessler  
Stanley H. Fuld Professor of Law

Jeremy Kessler - [jkessler@law.columbia.edu](mailto:jkessler@law.columbia.edu) - 212-854-4947

Columbia Law School

June 14, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

***Re: Recommendation for Josceline M Sanchez***

Dear Judge Walker:

I write to recommend Josceline Sanchez for a clerkship in your chambers. Bright, motivated, and tireless, Josceline's path to this application is reason alone to give her strong consideration. She has my highest recommendation.

I got to know Josceline as the advisor to the Note she submitted to the Columbia Human Rights Law Review. The Note argued for a limited right to higher education for people who are incarcerated. I was skeptical of this argument when Josceline first presented it to me (and she is fully aware of its doctrinal hurdles), but as we hashed out her ideas over multiple sessions in my office, I came around to the creativity and plausibility of the argument. I also came to know better, through Josceline's research, the gap in the magnitude of what would be required for prison administrators to provide these opportunities and the difference it would make in people's lives. Importantly, unlike other putative burdens on prison administration, this intervention would serve the state's rehabilitative goals and not just benefit inmates, an important step in Josceline's argument. What emerged from Josceline's work is an exhaustively researched, well-written, and well-presented argument for a change in the law. Even someone who is not fully persuaded of Josceline's ultimate conclusions will, I predict, be persuaded to reassess their priors about the rights and opportunities available to incarcerated persons. Josceline's Note belongs to the best tradition of innovative, reform-minded, and yet sober-minded advocacy.

Beyond the substance of the Note, the time Josceline and I spent together discussing her ideas left me deeply impressed with her, both as a budding lawyer and as a human being. Josceline is exceptionally bright, intellectually curious, a good listener, and a very fast learner. Perhaps owing to her accounting background (on which more below), she is meticulously organized. She is also humble, empathetic and easy to talk to. She would be a joy to have in chambers.

I also learned more in those office meetings about the inspiration for Josceline's Note topic, and the source of her deep concern for the rights and conditions of people under state supervision. Josceline grew up under exceptionally challenging circumstances. Her parents emigrated from El Salvador shortly before she was born, and both her parents served time in prison over subsequent years. Her mother was deported for her crimes when Josceline was 11 years old, and she died less than a year later. Her father's criminal history made it difficult for him to qualify for legal status and find work. Throughout her childhood, Josceline frequently had to pick up and leave for new neighborhoods, cities, and even states at a moment's notice.

Despite struggling in primary and secondary school, Josceline was able to obtain an associate's degree at Miami Dade College before transferring to the University of Miami to pursue a nascent interest in accounting that a mentor encouraged her to pursue. Josceline went on to work professionally as an accountant between college and law school. While she was in college, a close family friend, just 20 years old, was charged with felony murder and sentenced to 18 years in prison. Her friend's experiences with the criminal justice system introduced Josceline to prison reform advocacy and inspired her to apply to law school.

Josceline's path is not typical of her classmates. As remarkably, it is nearly unheard of for people who travel Josceline's path to wind up with consistent A-level grades at Columbia Law School, in courses like Federal Courts (in just her third semester of law school), Legislation and Regulation, Criminal Law, and a Supreme Court seminar with a Second Circuit judge. Josceline was able to achieve that extraordinary trajectory despite her 1L classes being conducted remotely and therefore lacking the organic learning opportunities ordinarily needed to vault students from humble backgrounds into the top grading tiers.

So when I say Josceline is a very fast learner, I mean it. And when I say she is humble, and curious, and tireless, I mean that too. I am not just happy to recommend her for a judicial clerkship; I am honored to do so.

Please do not hesitate to reach out to me if I can be of further assistance.

Sincerely,

Jamal Greene  
Dwight Professor of Law

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**JOSCELINE SANCHEZ**

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**WRITING SAMPLE**

The following writing sample is my appellate (“mock”) opinion for the Fall 2021 Supreme Court seminar for which I was assigned the role of Justice Sonia Sotomayor. My assigned mock opinion was the dissenting and concurring opinion for the case *United States v. Zubaydah* for which the Supreme Court has since issued a final opinion. *United States v. Zubaydah*, 142 S. Ct. 959 (2022).

In *United States v. Zubaydah*, the petitioner was the United States government and the respondent was Mr. Abu Zubaydah. The primary issue litigated by the parties was whether the state secrets privilege precluded the U.S. government from producing any discovery in accordance with Mr. Zubaydah’s request under 28 U.S.C § 1782. The District Court held in favor of the U.S. government, holding that discovery was precluded in its entirety. On appeal from respondent, the Ninth Circuit reversed and remanded the case to the District Court, holding that (1) three categories of information were non-privileged and (2) the District Court must use discovery safeguards to determine whether the non-privileged material could be separated from the privileged material. On appeal from petitioner, the Supreme Court granted certiorari.

Because one of our objectives was to respond to the majority mock opinion (written by a different student), my mock opinion includes various references to their specific opinion. The majority mock opinion held judgment in favor of the petitioner, holding that all three categories of information were privileged material protected from disclosure. My complete opinion concurs with a portion of the majority’s reasoning as to one of the categories of information and dissents as to the remaining categories of information and the judgement. The following excerpt is the dissenting portion of the opinion.

This mock opinion is entirely my own work and has not been edited by anyone else.

## UNITED STATES, PETITIONER v. ABU ZUBAYDAH

## JUSTICE SOTOMAYOR concurring in part, and dissenting in part

Today's decision grants the Government's extraordinary request to prohibit all discovery for a claimant who seeks evidence that has been repeatedly declassified and officially disclosed. This denial of justice sidesteps the laws of Congress and ignores the compelling record. The majority all but cedes judicial control of discovery proceedings to Government agencies under the guise of the state secrets privilege—an evidentiary tool that has been repeatedly exploited.

While I concur with a portion of the majority's reasoning, I dissent from the judgment.

## I

The nation found itself in a world of fear and panic on September 11, 2001. Thousands of lives were lost and millions more were forcefully uprooted. These events and their immediate aftermath, however, propelled us into a new age of counterterrorism strategies, foreign alliances, and federal agency initiatives under what should have been the watchful eye of our government. One of these early initiatives was the CIA's Detention and Interrogation Program (CIA Program) which was declassified as part of the Senate Select Committee on Intelligence's ("SSCI") investigation into CIA activities in 2014. The full classified report was provided to certain parties in our government as a "warning for the future" and "in the hopes that it [would] prevent future coercive interrogation practices and inform the management of other covert action programs." *SSCI Report* at iv. At the center of the now-decommissioned program was the respondent in today's case and the first detainee ever subjected to the CIA Program, Mr. Abu Zubaydah.

## III

For the reasons stated in Part II, I concur in the majority's reasoning that disclosing information that officially confirms or denies the existence a Polish CIA black site or a Polish clandestine relationship would risk harm to national security and is therefore covered by the state secrets privilege. The majority's decision, however, to bar *any* discovery allows the Government to "cast an irrebuttable presumption of secrecy over an expansive array of information in Agency files, whether or not disclosure would be

detrimental to national security, and to rid the Agency of the burden of making individualized showings of compliance with an executive order.” *CIA v. Sims*, 105 S.Ct. 1881, 1899 (Marshall, J., concurring).

In *United States v. Reynolds*, 345 U.S. 1 (1953), we held that “too much judicial inquiry into the claim of privilege would force disclosure of the thing the privilege was meant to protect, while a complete abandonment of judicial control would lead to intolerable abuses.” *Reynolds* at 8. While it is true that even the “most compelling necessity cannot overcome the claim of privilege,” this can only be the case when a court has ascertained that “secrets are at stake.” *Id.* To aid in its inquiry, a court looks to the showing of necessity to “determine how far the court should probe in satisfying itself that the occasion for invoking the privilege is appropriate.” *Id.* This would mean that a stronger showing of necessity would warrant more careful review of the Government’s claim, not less. The Court, today, has failed in its duty to strike this balance and shown that there is “no logical limit” when such “sweeping characterizations” are asserted by the Government. *Mohamed v. Jeppesen Dataplan, Inc.*, 579 F.3d 943, 955 (2010).

A

In *Reynolds*, the surviving widows of three civilians who perished in the fire of a military aircraft that crashed while conducting a secret Air Force mission filed federal tort claims against the United States. The widows sought discovery of the Air Force’s official accident investigation report and the statements of the three surviving crew members taken as part of the investigation. While the general existence of the flight program and the crash were public knowledge, the Secretary of the Air Force claimed state secrets privilege as production of the documents requested in discovery would disclose “highly technical and secret military equipment.” *Reynolds* at 5. The Court noted that such equipment “must be kept secret if [its] full military advantage is to be exploited in the national interests.” *Id.* at 10. Therefore, the Court upheld the state secrets claim, finding a “reasonable possibility” that the investigation report would contain references to the secret equipment. *Id.* at 11. Before granting the claim, however, the Court first assessed whether the necessity of procuring the investigation materials in discovery was minimized by an available alternative.

In the same affidavit where the Government asserted its privilege, the Secretary formally “offered to produce the three surviving crew members, without cost, for examination by the plaintiffs.” *Id.* at 5. The witnesses would be “authorized to testify as to all matters except those of a ‘classified nature.’” *Id.* The claimants, therefore, were allowed to take testimony from surviving crew members, to prove its causation and negligence theory, without risking exposure of the state secrets allegedly contained in the physical evidence. We therefore concluded that the plaintiff’s failure to accept the offer led to a “dubious showing of necessity.” *Id.* at 11.

On the other hand, in the first state secrets case, *Totten v. United States*, 92 U.S. 105 (1876), the Court determined that an espionage contract for secret services during the Civil War, between a secret agent and the United States Government, “preclude[d] any action for its enforcement.” *Id.* at 107. Although the Court recognized that the claimant seeking to recover the fee owed per the contract may not have had any other available relief, it dismissed the case. The Court reasoned that further litigation of the alleged contract terms—compensation for secret services rendered—and a potential judgment on the merits could confirm or deny both the existence and the substance of the contract. Not willing to risk disclosure of such sensitive information, the Court dismissed the case altogether.

*Totten* and *Reynolds* establish the guiding principle that a court should follow in assessing any state secrets privilege claim. Where, as in *Totten*, the claimant seeks to litigate or enforce the very state secret itself, even the “most compelling necessity” will not have the courts interrogate the claim of privilege. But where, as in *Reynolds*, the claimant seeks evidence that is distinguishable from state secrets, a court should assess the claim of a state secrets privilege in relation to the showing of necessity or the availability of an alternative to the claimant. Where such is the case, then a state secrets claim that is fairly limited, as it was in *Reynolds*, will likely defeat a weaker showing of necessity. Where the state secrets claim is rather expansive, as it is in the present case, then a court should exercise a more careful review, especially where the showing of necessity is great. Indeed, as the majority acknowledges, the

respondent's showing of necessity defeats the claim of privilege "if he shows that the privilege is weak or does not exist." JH.Ma.1.

In the present case, the claim of privilege and the level of necessity point in opposite directions. Not only is the claim of privilege categorical in nature and inconsistent with prior government action, the respondent also demonstrates a "strong showing of necessity," as the majority rightfully acknowledges. Mr. Zubaydah has been held in an overseas military base since 2012. He will likely never have the ability to personally testify in any legal proceeding. Thus he requests, among other things, testimony from Mitchell and Jessen, former CIA contractors who have previously testified about their involvement with Mr. Zubaydah in CIA black sites as recently as the year 2020. He requests the information for the purpose of assisting Polish prosecutors in their investigation against Polish officials. While not for a domestic claim, the request is critical for judicial relief in a foreign proceeding in which Mr. Zubaydah alleges crimes were committed against him and for which he would be able to personally testify if he was not being held extrajudicially by the CIA. That is the only reason he seeks discovery through § 1782. His necessity is unprecedented in our history. Yet, the petitioners would ask this Court to apply a categorical bar against *any* discovery. This is the opposite of the "compromise" described in *Reynolds*.

Rather than merely accepting the Government's "sweeping assertions," a court should carefully assess categorical claims of privilege that seek to preclude all forms of discovery before we dismiss a request as compelling as the one presented by Mr. Zubaydah. Although I agree that information that could officially confirm the location and identities of foreign partners is privileged, the scope of the Government's claim far exceeds that specific information and extends to all forms of discovery, including information they have not only produced in prior hearings but also officially and publicly disclosed.

## B

The majority almost entirely disregards a record which describes clear and delineated categories of information that the Government has publicly acknowledged on multiple occasions do *not* contain state secrets it swore to protect. In their disregard of this official record, the majority "effectively cordon[s] off

all secret government actions from judicial scrutiny, immunizing the CIA and its partners from the demands and limits of the law.” *Mohamed v. Jeppesen Dataplan, Inc.*, 579 F.3d 943 (2009).

Unsurprisingly given the public record of the post-9/11 CIA Detention Program, the majority does not take issue with the claim that details pertaining to Mr. Zubaydah’s treatment and conditions of confinement are almost entirely non-privileged information. Instead, the majority argues not only that this information can reveal privileged facts, but that nearly *any* fact might allow for the construction of a “mosaic,” from which privileged facts could be inferred. The majority raises the following hypothetical: “non-public medical technology” could properly be claimed as privileged because such technology could be limited to secret government operations, and disclosure might risk the security of the secret locations where said operations take place. But the Government has not even come close to this position. JH.Ma.1. The Government has not claimed that all requested categories of information are classified or of a confidential nature—it would be disingenuous to make such claims given that much of this information has been previously disclosed in a public Congressional hearing and other public proceedings. Rather, it stated that it “determined [] certain categories of information—including the identities of its foreign intelligence partners and the location of former CIA detention facilities in their countries could not be declassified without risking undue harm to national security.” Pet. Br. 3. Pet. App. 124a & n.1, 126a, 129a-130a. Indeed, “[the Government] [] declassified a significant amount of information regarding the former CIA program, including the details of Abu Zubaydah’s treatment while in CIA custody, which included the use of enhanced interrogation techniques (EITs).” *Id.* The Government’s state secrets claim, however, goes well beyond this privileged material and touches upon information that is no longer secret.

Contrary to the Government’s assertions, this Court, in *Reynolds*, recognized that the “secret military equipment” at the heart of the case was actually a secret. If the Court would have had reason to believe that military secrets had been officially disclosed—as they actually were nearly half a century later—then any risk the Government claimed existed would have been realized in such disclosure. Our decision was in relation to the nature of the “highly technical and secret military equipment” that the Air

Force thought should remain secret for purposes of an effective military defense. See also *Totten v. United States*, 92 U.S. 105 (1876) (holding that the “secrecy which [espionage] contracts impose precludes any action for their enforcement.”)

## C

The Government is correct, however, in that they are owed deference with respect to what constitutes secret information. It is, after all, information in their possession, and they are more aware of the risk disclosure would present, “as judges are not.” *Sims* at 179. As the respondent properly notes, however, this argument is nevertheless inconsistent with their claim to preclude all forms of discovery.

In 2017, the Government played an important role in the depositions and proceedings against the defendants in *Salim*, Mitchell and Jessen, regarding almost identical information about the CIA Program. *Salim v. Mitchell*, No. 2:15-cv-286-JLQ (E.D. Wash. 2015). Instead of producing documents requested in discovery, the Government submitted a Status Report Addressing Document Production and Statement by the United States Addressing Redactions to Documents Produced in Response to Defendant’s Subpoenas (“Status Report”). 2016 WL 7046256 (E.D. Wash. 2016). The Status Report provided the court with the CIA’s rules and guidelines for what categories of information were precluded from production pursuant to various exemptions and privileges. Their “uniform system for classifying, safeguarding, and declassifying national security information” was based on the classification guidance provided by Executive Orders which may be revised pursuant to additional declassifications or Executive Branch guidance. *Executive Order 13526*, Classified National Security Information, 75 Fed. Reg. 707 (Dec. 29, 2009) (governing classification of information generally). Additional executive guidance governing the CIA Detention Program relates to “categories of information about the program that remain classified, as well as categories of information that are currently unclassified” or that have already been “declassified and produced in connection with the [Freedom of Information Act] cases.” *Id.* at 1. The specific categories of evidence excluded in *Salim* were the “names and [the] identifying information of CIA and military personnel; information regarding the location of CIA detention facilities and identifying information

about those facilities to include physical and operational descriptions; codenames for classified CIA intelligence programs” and other specific categories that would risk privileged disclosures. *Id.* at 2.

It would surely follow from this past instance alone that the procedural safeguards related to the CIA Program could allow for safe depositions which would not expose state secrets given the fact that “60 responsive documents, totaling approximately 900 pages” had been produced by Mitchell and Jessen, both of whom were also subject to direct and cross-examination at the *Salim* deposition. *Id.* at 1. The Government explained that their “approach expedited production of responsive documents to Defendants and also avoided the burdens and time associated with re-reviewing and re-processing documents that had already been authorized for public release.” *Id.* Included in the responsive documents was a detailed report that contained (1) information about the “capture and detention of Abu Zubaydah” and (2) other documents that provided “material information about Defendants’ involvement in the development of the program, the interrogations of Abu Zubaydah,” detention and interrogation techniques at the “COBALT facility where Plaintiffs were detained,” and other specific information. *Id.* at 3. Per the trial court’s order, the Government had the discovery obligation to produce certain categories of CIA documents including “documents that reference one or both of the Defendants *and* Abu Zubaydah” with dates ranged from September 11, 2001 to August 1, 2004, a total of 36,000 documents. *Id.* at 6. The Government stated that it was reviewing and would continue to review those documents on a “rolling basis for classification and privilege review and, if appropriate, redaction.” *Id.* at 7. These assertions were made in October 2016.

Though it is commendable that the Government has made this good-faith showing in the past, it is troubling that they refuse to even produce documents that they produced for discovery before and other documents that have been designated as non-privileged by the proposed production date.<sup>1</sup> The majority’s blatant disregard of this record is mistaken, and largely premised on this Court’s decision in *Sims* and the D.C. Circuit decision in *Fitzgibbon v. CIA*, 911 F.2d 755 (D.C. Cir. 1990). It is important to address

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<sup>1</sup> See Defendant’s Statement Re Deadline for U.S. Document Production in *Salim*, 2016 WL 8710658, proposing a 2017 deadline for production.

important distinctions from those cases that both refute a significant portion of the Government’s claim of privilege and that support the respondent’s assertion that accepting the Government’s claim would “shield its privilege assertions from any review.” Res. Br. 46.

#### D

In *CIA v. Sims*, 471 U.S. 159 (1985), the director of the Public Citizen Health Research Group sought the “names of the institutions and individuals who had performed research” under a CIA intelligence research project that was vital to our counterterrorism efforts against foreign nations. The Government denied various requests, claiming that Exemption 3—a statutory exception that precludes certain requests made under the Freedom of Information Act (FOIA)—and which protected the material from disclosure.<sup>2</sup> We afforded the government “great deference” with respect to the identities of intelligence sources it claimed could not be disclosed without risking their confidentiality. *Id.* at 179. Because we, as judges, do not have the capacity to determine whether an “[a]gency actually need[s] to promise confidentiality in order to obtain the information,” we should not compromise the security of intelligence sources even if we could determine, after the fact, that the Agency did not need to rely on the source for intelligence gathering. *Id.* at 176. We also held that in order to effectuate this end, the CIA Director had the authority to withhold even “seemingly innocuous information” that might allow someone to discover protected identities. *Id.* at 178.

In addition to the misplaced reliance on *Sims*, the majority also cites to *Fitzgibbon v. C.I.A.*, a decision in which the United States Court of Appeals for the D.C. Circuit relied on *Sims* to strike down an FOIA request made by a historian studying the disappearance of a Spanish politician. *Fitzgibbon v. C.I.A.*, 911 F.2d 755 (1990) (explaining that the claimant in that case sought information that the Government asserted could compromise intelligence sources and methods as it did in *Sims*). While a cursory review of these two cases supports the Government’s argument that all information should be excluded simply

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<sup>2</sup> The CIA produced, however, in connection with the initial FOIA request, several responsive documents it did not find were protected under Exemption 3.

because the Government claims it should be, the matters in this case have been made far more public than those in *Sims* and *Fitzgibbon*. The majority's failure to recognize this distinction dangerously expands the state secrets privilege beyond what this Court carefully set as its limit in *United States v. Reynolds*.

## 1

As an initial matter, the claimant in the present case is not requesting discovery under the FOIA and therefore no exemption can be claimed by the CIA. It is notable, however, that if such information could have been requested under the FOIA, the Court's review would be based on Exemption 1, not on Exemption 3 as was the discovery in *Sims* and *Fitzgibbon*.<sup>3</sup> This distinction is an important one considering Congress' clear and unambiguous efforts to preserve judicial review when Exemption 1 was invoked. In such cases, an agency must make individualized showings to the reviewing court.

If Mr. Zubaydah was able to make this request under the FOIA, he would likely be afforded proper judicial review the Government's claims to privilege. His request, in such a situation, would fall under Exemption 1 which, unlike Exemption 3 in *Sims*, is the governing Exemption to disclosing the information related to the CIA Program in question today. Exemption 1 has been carefully tailored to allow deference to the Executive Branch while preserving the federal courts' ability to exercise judicial review. Indeed, "[a]gency decisions to withhold are subject to *de novo* review in the courts, which must ascertain whether documents are correctly classified, both substantively and procedurally." *Sims* at 183 (Marshall, J., concurring). Naturally, there is disagreement among the lower courts as to how strict review should be for matters of national security and foreign affairs. But we should note that Congress overruled not only our decision in *EPA v. Mink*, 410 U.S. 73 (1973) but also a Presidential veto when they amended Exemption 1 to explicitly allow for such judicial review into these matters. *Id.* at 189. This clear Congressional statement was against the backdrop of the carefully investigated and publicly declassified

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<sup>3</sup> the CIA Detention Program is governed by Executive Orders for purposes of their classification and review

CIA Rendition Program. Today, however, the majority distorts this record and allows for the acquiescence of the Judicial Branch to the Executive Branch.

2

Secondly, unlike the security risks presented in *Sims* and *Fitzgibbon*, the locations and identities of foreign countries, and any “seemingly innocuous information” can remain safely guarded. Congress has acknowledged as much: The Congressional committee, at the CIA’s request, redacted even from the *classified* SSCI report “the names of countries that hosted CIA detention sites thereby safeguarding that highly classified information.” Pet. Br. 15. The Government’s skillful litigation strategy does not go unnoticed. Its brief is riddled with conclusory remarks that its categorical claim of privilege is justified because of the need to protect the identities of its foreign partners, providing virtually no justification for Mr. Zubaydah’s other discovery requests. Moreover, the Government has successfully determined, on at least three occasions, what information has the power to reveal the privileged material: the identities and locations of its clandestine relationships, and has successfully protected any compromising information.

The Government has, as described above, submitted status reports that demonstrate that the Government completed its due diligence, identifying various factors and specific classes of information that would present an unjustifiable risk. If *all* documents related to the CIA program did present such a high degree of risk, then one would not be able to access the ten transcripts of Mitchell and Jessen’s testimony—totaling almost 2,000 pages—which are available on the public military commission website. *United States v. Khalid Mohammad, et al.*<sup>4</sup> One also wouldn’t have access to the thousands of pages of unclassified notices, documents, and exhibits that are designated “for public release.” *Id.* The Government, surely, must have considered what information would enable billions of internet users to deduce the privileged information that ought to be protected.

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<sup>4</sup> Transcripts available at <https://www.mc.mil/>. Mitchell and Jessen testified from January 21, 2020 to January 31, 2020.

The Government has also allowed Mitchell and Jessen to disclose non-privileged information, without claiming that such disclosures would breach the confidentiality of foreign partners. Mitchell and Jessen were allowed advance review of the documents describing the events they would be questioned about. *Salim*, 2016 WL 8710658. They were also prepared, in advance of the proceedings, allowed to review the details of classified information they were not allowed to disclose. *Id.* In some instances, depositions were limited to written questionnaires first and oral depositions second. *Id.* In other instances, they conducted “motion practice” to resolve any objections to answers that may contain privileged information. *Id.* This precedent cannot be so easily ignored, despite the majority’s inclination to do so.

These classes of information are not nebulous nor do they have an uncertain nature that would justify the majority’s neglect of judicial review, especially considering that two of these proceedings were of a familiar kind—one in a federal district court and the other in a military commission. This information has also been publicly disclosed through both legal databases and public websites. Indeed, even “apparent deference” would suggest the Government is capable of granting some the discovery requests, without jeopardizing the privileged content. Pet. Br. 17. Although the majority acknowledges these prior testimonies and disclosures, their cursory review distorts the record in favor of the Government.

#### IV

##### A

While the respondent initially requested information with a particular interest in the “involvement of the local, Polish citizens,” respondent ultimately understood that this information was subject to privilege, per the Government’s claim. *In Re Zayn*, No. 2:17-CV-0171-JLQ at \*8, \*4 (E.D. Washington 2018) Respondent further explained that “valuable discovery may proceed without requiring [the Government] to confirm either the location of any particular site, or the cooperation of any particular government.” *In Re Zayn* at \*8, \*4. To this end, the District Court rejected the Government’s motion and held that “rewrite[ing] the subpoenas to seek non-privileged information” could avoid a claim of the state secrets privilege. *Id.* at 9. (explaining that the “[t]he Court can modify or limit the scope of the

subpoena.”) Nevertheless, our decision in *Reynolds* would also affirm the District Court’s stipulation. Our ultimate holding was to remand when “it should be possible for respondents to adduce the essential facts as to causation without resort to material touching upon [state] secrets.” *Reynolds* at 11.

Although Mr. Zubaydah’s request is not made for purposes of proving negligence, nor even for a case in a United States court, the request is not of lesser importance as the Government would have the Court believe. The evidence is sought for purposes of proving unlawful conduct that allegedly caused harm to Mr. Zubaydah. There is no reason we must accept one purpose and ignore another equally valid purpose which decidedly weighs in favor of the necessity of disclosure. Section 1782 is the statutory vehicle which allows us to ascertain these reasons for the discovery claim. Past experience demonstrates that relevant testimony and documents can be, and have been, safely disclosed without jeopardizing privileged information. The majority does not review this crucial history that is not only demonstrative of a successful disentanglement but also too recent and relevant to ignore.

1

Between 2009 and 2014, the SSCI conducted a “comprehensive review” of the former CIA program. The full 6,700-page report was summarized into a nearly 800-page<sup>5</sup> Senate Report that was further declassified and published by the Government in 2014. It provides details about specific interrogation methods, 12 to be exact, used against Mr. Zubaydah. The Senate Report details a timeline of information similar to the information sought here without ever disclosing the privileged information that has been historically protected. Pet. Br. 6. Not only does the majority acknowledge this comprehensive investigation, it also acknowledges the book released by Mitchell and Jessen which also publishes significant portions of the Senate Report concerning the interrogation methods used against Mr. Zubaydah. The majority, however, manages to disregard the significance of these disclosures and all but ignores the lengthy pieces of testimony that Mitchell and Jessen have provided in subsequent years.

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<sup>5</sup> SSCI Report, December 2014,  
[https://www.intelligence.senate.gov/sites/default/files/documents/report\\_volume5.pdf](https://www.intelligence.senate.gov/sites/default/files/documents/report_volume5.pdf)

2

The official record, as authorized and disclosed by the Government, has continued to evolve over the past four years. In 2017, Mitchell and Jessen testified, in great length, as defendants to the *Salim* case. They provided details pertaining to the treatment of former CIA detainees, including Mr. Zubaydah. They described the timing of their visits to certain black sites, the interrogation methods used on Mr. Zubaydah including “sleep deprivation and dietary manipulation,” the details regarding when Mr. Zubaydah was transferred to another site, and their reluctance to the continued “tortur[ing]” of Mr. Zubaydah despite their professional assessment that such methods were ineffective. The Government does not dispute this. Res. Br. 28. (C.A.E.R. 114-49). In fact, the Government declassified, produced, and allowed Mitchell and Jessen to testify about similar information three years later in a Military Commission trial.

3

Mitchell and Jessen provided testimony, as defense witnesses in the Military Commission trial *United States v. Khalid Shaikh Mohammad*,<sup>6</sup> over the span of 10 days from January 21 through January 31, 2020. They testified on both direct- and cross-examination about the “design of the RDI [Rendition, Detention, and Interrogation] program,” their “observations of and/or participation in interrogations of the Accused,” and the application of enhanced interrogation techniques.<sup>7</sup> Mitchell testified, in accordance with his book, about the appearance of detainees and their physical and emotional reactions to specific interrogation techniques. The trial transcript the Government cites to in its brief expressly states that Mitchell and Jessen were allowed to testify as to the “internal construct of a black site, what was being used, what it looked like, and what the internal” features appeared like.<sup>8</sup> The Military Judge concluded that despite the fact that the evidence was being provided for an “adversarial” proceeding, “[the

<sup>6</sup> See, e.g., 1/21/2020 Tr. at 30164, *United States v. Khalid Shaikh Mohammad* (Military Comm., Guantanamo Bay, Cuba), <https://go.usa.gov/xMx35>

<sup>7</sup> Id.

<sup>8</sup> Id. at 30164-30166.

Government] shouldn't have over-classification [] for stuff that's clearly been declassified for significant periods of time.”<sup>9</sup> Indeed, this balance is what this Court has also held to be the objective of the judiciary in assessing a state secrets privilege. In *Reynolds*, we recognized that “too much judicial inquiry into the claim of privilege would force disclosure of the thing the privilege was meant to protect, while a complete abandonment of judicial control would lead to intolerable abuses.” *Reynolds* at 8. The majority's decision today undeniably falls into the latter.

Even more notably is the fact that the decisions of the District Court and the Circuit Court predated the 2020 Military Commission case, a case so recent it remains the first decision on the Military Commission website as of November 2021.<sup>10</sup> Naturally, the lower courts cannot be faulted for not considering events that occurred *after* their adjudication; the same cannot be said for this Court, which cannot close its eyes to relevant subsequent developments. But it is against this record that the Government asserts a categorical claim of the state secrets privilege, advancing the false proposition that disclosure of any discovery necessarily confirms a Polish partnership. This bold assertion is wholly opposite to the stance taken in *Salim* where the Government asserted the privilege only after discovery was underway for several months and for which they asserted “various privileges as to specific documents.” *In Re Zayn* at \*8.

## V

It is important to assess the credibility of the Government's most problematic claim that “any disclosure would necessarily confirm the existence of a Polish black site” and which the majority blindly accepts to be true. JH.Ma.1 Whatever the basis for this assertion, whether it be based on the mere “appearance” of a breach of trust or the “classified mosaic” theory, the mere production of discovery to a district court could not possibly present substantial risk. The risk of disclosing privileged material is only realized if the evidence was actually provided to anyone outside a United States court. The District Court,

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<sup>9</sup> *Id.* at 30167

<sup>10</sup> Office of Military Commission, Cases, <https://www.mc.mil/cases.aspx>

however, is not the respondent nor the Polish prosecutor, and there is no risk in an initial disclosure to a federal court.

#### A

Production to the District Court is warranted by the wealth of production that occurred in *Salim*. If the Government has already produced some of the discovery requests under protective court orders, it cannot be true that doing so again would risk disclosure of state secrets; if disclosure to judicial officers did not pose an unjustifiable risk then, how can it present such a risk now? On the other hand, if production were to proceed under protective orders, the District Court would have the opportunity to separate the privileged from the non-privileged information.<sup>11</sup> These discovery mechanisms would surely allow for a safe review and provide a viable path forward as compared to following the majority which, in its infinite wisdom, boldly concludes that disentanglement is not possible.

#### B

The majority's review is also concerning considering that the requested discovery is not for purposes of domestic litigation. It recognizes that a valid claim of privilege "requires outright termination of the case" in cases where it is "impossible to proceed with the litigation because—privileged evidence being inseparable from non-privileged information that will be necessary to the claims or defenses—litigating the case to a judgment on the merits would present an unacceptable risk of disclosing state secrets." *Mohamed v. Jeppesen Dataplan, Inc.*, 614 F.3d 1070, 1083 (2010). But if this is indeed the case, then the necessary assumption is that there must be litigation in which claims or defenses can be presented in the first instance. The majority's decision to overlook this premise is also misguided.

The majority and the Government have operated on contradictory logic throughout this case. The Government claims that nongovernmental sources that allege Detention Site Blue was the Poland site are

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<sup>11</sup> Though it should be noted that for purposes of physical evidence, the Government must have surely completed or almost completed this disentanglement in *Salim* and the numerous FOIA cases litigated in the past two decades.

alleging only “rumors” and “speculations,” and should be “properly understood ‘as being of uncertain reliability.’” Pet. Br. 31 (citing to *Alfred A. Knopf, Inc. v. Colby*, 509 F.2d 1362, 1368, 1370 (4<sup>th</sup> Cir.), cert. denied, 421 U.S. 908, and 421 U.S. 992 (1972)). In the same brief, however, it asks this Court to take such rumors and speculations as the primary justification for excluding *all* discovery. If nongovernmental findings that Detention Site Blue was a Poland site have “uncertain reliability,” then non-privileged information cannot “necessarily disclose” the existence of a black site in Poland. For all we know, and according to the Government who can neither confirm or deny this fact, there were no detention sites in Poland. Perhaps Detention Site Blue was in Iceland. The fact is, there has been no official confirmation of the locations or foreign partners for *any* of the CIA black sites. To assume otherwise, would require giving credence to sources the Government argues should not be trusted.

I do not mean to suggest that Polish prosecutors cannot prove Polish complicity by their own independent means; a foreign government is always free to investigate within its sovereign borders and to make findings that may be unfavorable to the interests of the United States. It, therefore, cannot follow that the source of the request is the dispositive fact that would make proper or improper a state secrets claim. Rather than evaluating if there are any state secrets at stake, our inquiry would be reduced to questions of appearance and the risk of embarrassment. Indeed, this precedent would have “no logical limit.” *Mohamed v. Jeppesen Dataplan, Inc.*, 579 F.3d 943 (9th Cir. 2009), on reh'g en banc, 614 F.3d 1070 (9th Cir. 2010). But this Court established one limit: when the Government can protect all privileged facts and any attendant facts, then any remaining non-privileged facts are not subject to the state secrets privilege. *Reynolds* at 8. (remanding to lower court to allow for discovery alternatives).

### C

The majority fails to realize that the nature of Mr. Zubaydah’s request is limited to only the discovery proceedings that would allow for safe containment of privileged material—as the Government has done thrice before. Our governing principle was announced in *U.S. v. Totten*, where this Court held

that “public policy forbids the maintenance of any suit in a court of justice, the trial of which would inevitably lead to the disclosure of matters which the law itself regards as confidential.” *Totten* at 107.

The reason the state secrets privilege allows our courts to forbid a suit in our jurisdiction is because *our* state, and those within it who possess its secrets, are subject to the litigation and judgement. Their necessary involvement, if the suit were to proceed, unacceptably risks the disclosure of privileged information, whether through claims or defenses, or a potential judgment on the merits. This is the entire point of the state secrets privilege which, as the Government acknowledges, “belongs to the Government alone and cannot be waived by a private party.” Pet. Br. 17. But, the Government, and private parties who possess its secrets, have no involvement in the foreign proceeding; the involvement ends in a domestic discovery proceeding and, therefore, the risk of subsequent privileged disclosures.<sup>12</sup>

The respondent’s request is for the purpose of a Polish proceeding investigating alleged Polish conduct which relates to CIA activities that the CIA disclosed to the public eight years ago—yes, the “cat is out of the bag.” JH.Ma.1. The evidence sought is not “evidence compelled under oath from government officials knowing the actual facts.” Pet. Br. 31. This is not a “suit against the Government based on covert [matters].” *Tenet v. Doe*, 544 U.S. 1 (2005). The Polish prosecutors are not even pursuing liability for crimes committed by or suing any individual (or entity) in our jurisdiction. Rather, they were tasked by the ECHR to investigate certain Polish conduct. Disclosure of confidential matters, therefore, cannot occur where the parties—capable of disclosing such matters—are not implicated in the process in which they may have to disclose such matters.

The concern that Poland’s prosecutors may “expose[e] the classified ‘mosaic,’” is not irrelevant as the Ninth Circuit proposed; it is simply not a risk when the “mosaic” was exposed by the United States itself. JH.Ma.1. As it relates to the identities and locations of foreign partners, the classified “mosaic” was protected by the Executive Branch when it successfully protected any compromising information in prior

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<sup>12</sup> It is important to note that Mr. Zubaydah likely also possess privileged information, but he is not capable of disclosing that information given his status as a United States detainee.

proceedings and when such information can remain protected when future foreign proceedings would not involve anyone who actually possessed privileged information—as they did in *Reynolds*, *Totten*, *Mohamed*, and *Salim*.

The foreign proceeding may certainly reach a judgment on the merits, in the manner and to the extent for which Polish laws allow, but their findings and a potential judgment are not a disclosure of *our* state secrets, much less United States confirmation of a clandestine relationship. Any non-privileged information we could have provide them with would have been limited in its contributions to the desired outcome of the prosecutors. Any findings they would have independently made before or after having received such information could not have had the effect of an official confirmation—as the Government has asked this Court to accept as true.

#### D

I finally address the Government’s last argument about preserving an “appearance of confidentiality” and what the majority cannot admit in its judgement but which clearly looms in the shadow of their opinion.

In papering over the true nature of the Government’s claim, the majority has all but ceded judicial control to the Government. The purpose of the respondent’s request is to assist Polish prosecutors who seek to investigate certain Polish officials for their alleged complicity in the crimes committed against Mr. Zubaydah by the CIA. It is all but certain that we can provide them information, without “touching upon [state] secrets.” *Reynolds* at 11. Yet, the majority refuses to allow even the preliminary discovery determination because doing so would taint the “appearance” and “assurance” of confidentiality that the Government promised its foreign partners.

The Government’s claim of harm does not deal with the actual breach of confidentiality or appearance of breach for which we raised legitimate concerns in *Sims*. Rather, the Government’s real concern is that certain Poland officials may be held accountable by their country, for reasons that I am sure are classified. But we cannot, as a judiciary, mend the relationship of the CIA’s alleged foreign

partnerships; we can only apply the laws Congress has entrusted us with. It is certainly unfair to Polish officials if they were indeed complicit but unaware of the true nature of the CIA operation they allowed within Polish borders. If this is the case, then the United States breached Polish officials' trust nearly twenty years ago, and this Court cannot distort nor disregard federal laws to salvage the wreckage left by the Executive Branch.

The request Mr. Zubaydah made was one entitled to review under § 1782. It allows for foreign governments and tribunals to seek discovery from our courts when they are unable to obtain such discovery—such as when one of their main witnesses and victims is detained by the U.S. government. Regardless of any unfavorable or embarrassing appearances that Mr. Zubaydah's request might have, the request is in light of what the ECHR believed was the responsibility of Poland enforcement officials to investigate human rights abuses as such abuses might pertain to *their* government. While the state secrets privilege serves to protect information that would directly prove any Polish complicity, this Court had the obligation to at least determine whether some evidence was not privileged and, therefore, not protected from disclosure. To this end, it would serve the majority to remember the aftermath of our decision in *Reynolds* when this Court accepted what was at least a more reasonably valid claim of privilege:

On remand, the surviving family settled with the government for less than what the District Court's original verdict awarded. Eventually, in 2000, the Government declassified the official investigation report. Contrary to the Government's nearly 50-year-old claim, it did not refer to any "highly technical and secret military equipment." Instead, it contained information about a common aircraft and demonstrated gross negligence, concluding that the cause of the crash was an engine failure that may likely have been prevented if the government had complied with inspection orders that were dated well over a year prior to the accident. *Herring v. United States*, WL 2040272 at \*8.

Today's decision denies Mr. Zubaydah far more and as a result of far less. He cannot settle with any government, American or Polish. The crimes committed against him, whether or not during a time of unprecedented fear and uncertainty, have been described in vivid detail and span the thousands of pages

generated by numerous investigations, lawsuits, and trials, but *none* of which were at the request or for the benefit of Mr. Zubaydah. As the Ninth Circuit rightfully noted, the obligation of a court was to make the preliminary discovery determination about the possible disentanglement between privileged and non-privileged material. This Court also had the obligation to provide Mr. Zubaydah's request a meaningful review. We fail that mission today.

I dissent.

## Applicant Details

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 Citizenship Status **U. S. Citizen**  
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 Address

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**24450**  
**Country**  
**United States**

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## Applicant Education

BA/BS From **Florida International University**  
 Date of BA/BS **April 2020**  
 JD/LLB From **Washington and Lee University School of Law**  
<http://www.law.wlu.edu>  
 Date of JD/LLB **April 28, 2024**  
 Class Rank **5%**  
 Law Review/Journal **Yes**  
 Journal(s) **Washington and Lee Law Review**  
 Moot Court Experience **Yes**  
 Moot Court Name(s) **John W. Davis Appellate Advocacy Competition**

## Bar Admission

## Prior Judicial Experience

Judicial Internships/ Externships      **Yes**  
Post-graduate Judicial Law Clerk      **No**

### **Specialized Work Experience**

### **Professional Organization**

Organizations      **Just the Beginning Organization**

### **Recommenders**

Baluarte, David  
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**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

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June 12, 2023

The Honorable Jamar K. Walker  
United States District Court for the Eastern District of Virginia  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I am a third-year law student at Washington and Lee University School of Law and I am writing to apply for a clerkship in your chambers in the 2024 term, but I remain open to any other term. I grew up as the son of Cuban parents in the Canary Islands, Spain and moved to the United States in 2015, when I was seventeen. I do not take for granted the opportunities I have had in this country, which allowed me to go to high school and college while working to support my family and gain citizenship. My background has taught me the importance of hard work and respect for mentors who can help and guide me to better myself in various avenues of my life, both personal and professional.

Through my coursework in classes such as Federal Jurisdiction and Evidence, I developed an interest in the inner workings of federal chambers. This motivated my Law Review Note, which will be published in September and explores the distinctive role of the federal judiciary when jurisdiction stripping statutes limit the adjudication of immigration cases. Through my work in these areas of the law, I developed critical legal research and writing skills that have prepared me to analyze complex legal issues and contribute meaningfully to your chambers.

Please find as part of this application a copy of my resume, most recent law school transcript, and writing sample. The writing sample is a draft of a memo that I wrote for District Judge Darrin P. Gayles in advance of a hearing for a motion to dismiss, and is included with his permission. Additionally, please find with this application letters of recommendation from Professors Alan Trammell, Elizabeth Belmont, and David Baluarte.

Thank you for your time and consideration. Please feel free to contact me at the above address, email, and telephone number.

Respectfully,



Christian Sanchez Leon

## Christian Sanchez Leon

sanchezleon.c24@law.wlu.edu • 402 South Main St., Apt. 4, Lexington, Virginia 24450 • (786) 901-0920

### Education

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#### **Washington and Lee University School of Law, Lexington, VA**

Juris Doctor Candidate, May 2024

Cumulative GPA: 3.837 (Top 5%)

Journal: *Washington and Lee Law Review*, Senior Articles Editor

Publication: *Do All Parents Have Equal Parental Rights? The Effects of Insulating Immigration Courts From Judicial Review on America's New Generation of Families*, 81 WASH. & LEE L. REV. (forthcoming 2023)

Activities: Semi-finalist, John W. Davis Appellate Advocacy Competition  
Latin American Law Students Association / First Generation Student Union, Mentor

#### **Florida International University, Miami, FL**

Bachelor of Science, *summa cum laude*, Criminal Justice, April 2020

Honors: Phi Beta Kappa; Deans List (multiple semesters); Bright Futures Florida Medallion Scholarship

Activities: Pre-Law Advising and Training Office, Advisory Board  
Criminal Justice National Honor Society, Vice-President

### Experience

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#### **Delaware Court of Chancery, Wilmington, DE**

*Full-Time Judicial Extern for the Honorable Lori W. Will*, Anticipated Dates: August 2023 – December 2023

#### **Hunton Andrews Kurth LLP, Miami, FL**

*Summer Associate*, May 2023 – July 2023

- Researched and drafted memoranda on procedural and substantive issues including offers of settlement, the applicability of federal regulations to ships at U.S. ports, and the limit of the economic loss rule
- Participated in individual representation of pro-bono client in eviction case, which entailed meetings with client and creation of materials in preparation for hearing

#### **U.S. District Court for the Southern District of Florida, Miami, FL**

*Judicial Intern for the Honorable Darrin P. Gayles*, May 2022 – August 2022

- Wrote bench memoranda and drafted judicial orders and decisions
- Observed court proceedings, oral arguments, settlement conferences, and motion hearings
- Researched and analyzed pending motions in civil and criminal matters

#### **Immigrant Resource Center of Miami, Miami, FL**

*Class Instructor*, August 2019 – May 2021

- Prepared immigrant student population for citizenship interview by providing classes in the English Language, U.S. history, government, and civics
- Participated in a 5-professor group to organize classes, student interviews, and course materials

#### **Santiago A Alpizar PA Law Firm, Miami, FL**

*Law Intern*, May 2019 – August 2021

- Conducted weekly legal research and sent updates of new cases on political asylum issues
- Completed immigration forms and provided full-time availability to respond to clients' inquiries
- Accompanied clients to USCIS interviews and served as Spanish-English interpreter

#### **Department of Criminology and Criminal Justice, Florida International University, Miami, FL**

*Research Assistant*, May 2018 – May 2019

- Performed comprehensive literature review from federal agencies in human trafficking
- Compiled and summarized key data from Department of Justice cases involving human trafficking to define characteristics and patterns of perpetrators and identify potential preventive strategies

### Languages and Interests

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- Spanish (native/bilingual proficiency) / Latin American Boom literature, soccer, basketball, 5k running

Print Date: 05/19/2023

Page: 1 of 2

Student: Christian Sanchez Leon

WASHINGTON AND LEE  
UNIVERSITY

Lexington, Virginia 24450-2116



SSN: XXX-XX-5215

Date of Birth: 05/12/XXXX

Entry Date: 08/30/2021

Academic Level: Law

## 2021-2022 Law Fall

08/30/2021 - 12/18/2021

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 109	CIVIL PROCEDURE	A	4.00	4.00	16.00	
LAW 140	CONTRACTS	A-	4.00	4.00	14.68	
LAW 163	LEGAL RESEARCH	A	0.50	0.50	2.00	
LAW 165	LEGAL WRITING I	A-	2.00	2.00	7.34	
LAW 190	TORTS	A	4.00	4.00	16.00	

Term GPA: 3.863

Totals:

14.50

14.50

56.02

Cumulative GPA: 3.863

Totals:

14.50

14.50

56.02

## 2021-2022 Law Spring

01/10/2022 - 04/29/2022

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 130	CONSTITUTIONAL LAW	B+	4.00	4.00	13.32	
LAW 150	CRIMINAL LAW	A-	3.00	3.00	11.01	
LAW 163	LEGAL RESEARCH	A	0.50	0.50	2.00	
LAW 166	LEGAL WRITING II	A-	2.00	2.00	7.34	
LAW 179	PROPERTY	A	4.00	4.00	16.00	
LAW 195	TRANSNATIONAL LAW	A-	3.00	3.00	11.01	

Term GPA: 3.677

Totals:

16.50

16.50

60.68

Cumulative GPA: 3.764

Totals:

31.00

31.00

116.70

## 2022-2023 Law Fall

08/29/2022 - 12/19/2022

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 685	Evidence	A	3.00	3.00	12.00	
LAW 700	Federal Jurisdiction and Procedure	A	3.00	3.00	12.00	
LAW 708	Financial Literacy For Lawyers	A	1.00	1.00	4.00	
LAW 829	Civil Litigation Practicum	A-	5.00	5.00	18.35	
LAW 911	Law Review: 2L	CR	2.00	2.00	0.00	

Term GPA: 3.862

Totals:

14.00

14.00

46.35

Cumulative GPA: 3.791

Totals:

45.00

45.00

163.05

Print Date: 05/19/2023

Page: 2 of 2

Student: Christian Sanchez Leon

Lexington, Virginia 24450-2116

**2022-2023 Law Spring**

01/09/2023 - 04/28/2023

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 690	Professional Responsibility	A	3.00	3.00	12.00	
LAW 731	Immigration Law	A	3.00	3.00	12.00	
LAW 748	Core Uniform Commercial Code (UCC) Concepts	A	3.00	3.00	12.00	
LAW 831	Refugee Protection Practicum	A	3.00	3.00	12.00	
LAW 911	Law Review: 2L	CR	2.00	2.00	0.00	
Term GPA: 4.000			Totals:	14.00	14.00	48.00
Cumulative GPA: 3.837			Totals:	59.00	59.00	211.05

**2023-2024 Law Fall**

08/28/2023 - 12/18/2023

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 707L	Skills Immersion: Litigation		2.00	0.00	0.00	
LAW 933	Working In Law Full-Time Externship		2.00	0.00	0.00	
LAW 933FP	Working In Law Full-Time: Field Placement		10.00	0.00	0.00	
Term GPA: 0.000			Totals:	14.00	0.00	0.00
Cumulative GPA: 3.837			Totals:	59.00	59.00	211.05

Law Totals	Credit Att	Credit Earn	Cumulative GPA
Washington & Lee:	59.00	59.00	3.837
External:	0.00	0.00	
Overall:	59.00	59.00	3.837

Program: Law

End of Official Transcript

## WASHINGTON AND LEE UNIVERSITY TRANSCRIPT KEY

Founded in 1749 as Augusta Academy, the University has been named, successively, Liberty Hall (1776), Liberty Hall Academy (1782), Washington Academy (1796), Washington College (1813), and The Washington and Lee University (1871). W&L has enjoyed continual accreditation by or membership in the following since the indicated year: The Commission on Colleges of the Southern Association of Colleges and Schools (1895); the Association of American Law Schools (1920); the American Bar Association Council on Legal Education (1923); the Association to Advance Collegiate Schools of Business (1927); the American Chemical Society (1941); the Accrediting Council for Education in Journalism and Mass Communications (1948), and Teacher Education Accreditation Council (2012).

The **basic unit of credit** for the College, the Williams School of Commerce, Economics and Politics, and the School of Law is equivalent to a semester hour.

The **undergraduate calendar** consists of three terms. From 1970-2009: 12 weeks, 12 weeks, and 6 weeks of instructional time, plus exams, from September to June. From 2009 to present: 12 weeks, 12 weeks, and 4 weeks, September to May.

The **law school calendar** consists of two 14-week semesters beginning in August and ending in May.

**Official transcripts**, printed on blue and white safety paper and bearing the University seal and the University Registrar's signature, are sent directly to individuals, schools or organizations upon the written request of the student or alumnus/a. Those issued directly to the individual involved are stamped "Issued to Student" in red ink. **In accordance with The Family Educational Rights and Privacy Act of 1974, as amended, the information in this transcript is released on the condition that you permit no third-party access to it without the written consent from the individual whose record it is. If you cannot comply, please return this record.**

Undergraduate

**Degrees awarded:** Bachelor of Arts in the College (BA); Bachelor of Arts in the Williams School of Commerce, Economics and Politics (BAC); Bachelor of Science (BS); Bachelor of Science with Special Attainments in Commerce (BSC); and Bachelor of Science with Special Attainments in Chemistry (BCH).

Grade	Points	Description
A+	4.00	4.33 prior to Fall 2009 Superior.
A	4.00	
A-	3.67	
B+	3.33	Good.
B	3.00	
B-	2.67	
C+	2.33	Fair.
C	2.00	
C-	1.67	
D+	1.33	Marginal.
D	1.00	
D-	0.67	
E	0.00	Conditional failure. Assigned when the student's class average is passing and the final examination grade is F. Equivalent to F in all calculations
F	0.00	Unconditional failure.

Grades not used in calculations:

I	-	Incomplete. Work of the course not completed or final examination deferred for causes beyond the reasonable control of the student.
P	-	Pass. Completion of course taken Pass/Fail with grade of D- or higher.
S, U	-	Satisfactory/Unsatisfactory.
WIP	-	Work-in-Progress.
W, WP, WF	-	Withdrew, Withdrew Passing, Withdrew Failing. Indicate the student's work up to the time the course was dropped or the student withdrew.

Grade prefixes:

R	Indicates an undergraduate course subsequently repeated at W&L (e.g. RC-).
E	Indicates removal of conditional failure (e.g. ED = D). The grade is used in term and cumulative calculations as defined above.

Ungraded credit:

Advanced Placement: includes Advanced Placement Program, International Baccalaureate and departmental advanced standing credits.

Transfer Credit: credit taken elsewhere while not a W&L student or during approved study off campus.

Cumulative Adjustments:

Partial degree credit: Through 2003, students with two or more entrance units in a language received reduced degree credit when enrolled in elementary sequences of that language.

**Dean's List:** Full-time students with a fall or winter term GPA of at least 3.400 and a cumulative GPA of at least 2.000 and no individual grade below C (2.0). Prior to Fall 1995, the term GPA standard was 3.000.

**Honor Roll:** Full-time students with a fall or winter term GPA of 3.750. Prior to Fall 1995, the term GPA standard was 3.500.

**University Scholars:** This special academic program (1985-2012) consisted of one required special seminar each in the humanities, natural sciences and social sciences; and a thesis. All courses and thesis work contributed fully to degree requirements.

Law

**Degrees awarded:** Juris Doctor (JD) and Master of Laws (LLM)

Numerical	Letter	Grade*	Grade**	Points	Description
4.0	A			4.00	
	A-			3.67	
3.5			B+	3.50	
			B	3.33	
3.0			B-	3.00	
				2.67	
2.5			C+	2.50	
			C	2.33	
2.0			C-	2.00	
				1.67	
1.5				1.50	This grade eliminated after Class of 1990.
	D+			1.33	
1.0	D			1.00	A grade of D or higher in each required course is necessary for graduation.
	D-			0.67	Receipt of D- or F in a required course mandates repeating the course.
0.5				0.50	This grade eliminated after the Class of 1990.
0.0	F			0.00	Receipt of D- or F in a required course mandates repeating the course.

Grades not used in calculations:

-	WIP	-	Work-in-progress. Two-semester course.
I	I	-	Incomplete.
CR	CR	-	Credit-only activity.
P	P	-	Pass. Completion of graded course taken Pass/Not Passing with grade of 2.0 or C or higher. Completion of Pass/Not Passing course or Honors/Pass/Not Passing course with passing grade.
-	H	-	Honors. Top 20% in Honors/Pass/Not Passing courses.
F	-	-	Fail. Given for grade below 2.0 in graded course taken Pass/Fail.
-	NP	-	Not Passing. Given for grade below C in graded course taken Pass/Not Passing. Given for non-passing grade in Pass/Not Passing course or Honors/Pass/Not Passing course.

\* Numerical grades given in all courses until Spring 1997 and given in upperclass courses for the Classes of 1998 and 1999 during the 1997-98 academic year.

\*\* Letter grades given to the Class of 2000 beginning Fall 1997 and for all courses beginning Fall 1998.

Cumulative Adjustments:

Law transfer credits - Student's grade-point average is adjusted to reflect prior work at another institution after completing the first year of study at W&L.

**Course Numbering Update:** Effective Fall 2022, the Law course numbering scheme went from 100-400 level to 500-800 level.

Office of the University Registrar  
Washington and Lee University  
Lexington, Virginia 24450-2116  
phone: 540.458.8455  
email: registrar@wlu.edu

  
University Registrar

WASHINGTON AND LEE UNIVERSITY  
SCHOOL OF LAW  
LEXINGTON, VA 24450

June 08, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to enthusiastically recommend Christian Sanchez-Leon for employment in your chambers. I met Christian early in his tenure at Washington and Lee University School of Law (W&L Law), where I previously served as Associate Dean for Academic Affairs and currently serve as a Clinical Professor of Law and faculty advisor to the Latin American Law Students Association (LALSA). During the 2022-23 academic year, I had the immense pleasure of advising Christian on his Note for the W&L Law Review and teaching him in both my Immigration Law survey course and my Refugee Protection Practicum. Based on my broad experience with Christian, I write this letter to highlight his tremendous intellect, enviable work ethic, and unparalleled abilities in legal research, writing, and analysis. I am certain that he will surpass your expectations for a law clerk.

I first met Christian in my capacity as Academic Dean and faculty advisor to LALSA, as he often sought my advice about course and career planning as well as selection of a Note topic. I was immediately impressed with his seriousness, as well as his deliberative and thoughtful nature. However, it was not until I returned to full-time teaching in spring 2023 and was reintroduced to Christian in the classroom setting that I truly understood his exceptional legal acumen and limitless potential.

Christian mastered the material covered in my Immigration Law course. Topics in Immigration Law vary from complex constitutional doctrine to heavy statutory analysis, often accompanied by policy discussions and examinations of socio-political norms. Christian surpassed my expectations on a weekly basis. He was consistently well-prepared for class, having read and thought deeply about the material, and he would often go further and explore the implications of complex rules of substantive law and procedure. Christian always presented his ideas in class with clarity and confidence, and he engaged in debate respectfully and with well-reasoned arguments. On exams, Christian consistently demonstrated his ability to extract sharp legal rules from challenging materials, and to apply those rules to a variety of scenarios that implicate noncitizens. On both the mid-term and final exam, he received perfect and near perfect scores, putting him comfortably in the top 5% of the class.

You can find an example of Christian's engagement with immigration law in his Note, which has been selected for publication by the W&L Law Review. In his Note, he explores the impact of jurisdiction stripping provisions of the Immigration and Nationality Act on the integrity of mixed-status immigrant families, arguing for the consideration of family unity as a fundamental right to better protect families from arbitrary separation. In his Note, Christian showcases his knowledge of constitutional law, federal jurisdiction, statutory construction, as well as comprehensive research ability and crisp writing style. Christian also displays genuine compassion and a strong moral compass in his Note.

I also had the pleasure of teaching Christian asylum law and supervising work in my Refugee Protection Practicum. In that practicum, I assigned a refugee client to each of the students for limited representation and instructed them to help their clients file an asylum application with immigration court and prepare supporting materials for their client, including a declaration, an evidence index, and a legal brief. Christian received a challenging case that implicated a statutory bar to asylum and thus required that he perform substantial research and develop persuasive written arguments. Christian demonstrated diligence in the countless hours he spent on the phone with his client developing a detailed declaration, and substantial time completing country conditions and legal research to deliver a remarkably strong case.

As part of his work in the Refugee Protection Practicum, Christian also traveled with me to Mexico City over spring break to work with a refugee clinic at a Mexican university. Christian contributed a lot of research to a presentation I delivered to refugee clinic students and staff, and he engaged and asked thoughtful questions in the various meetings we held with refugee rights organizations throughout the city. When I gave the students Friday off for tourism, Christian chose to join me in delivering a workshop at a migrant shelter, where we made a joint presentation about U.S. asylum policies and gave individualized legal advice to asylum seekers. It became evident to me that Christian exemplifies professionalism in everything he does.

Finally, I want to highlight that I have had an extremely positive experience in both formal and informal advising meetings with Christian since his first year of law school. His intellect is accompanied by humility, his seriousness is peppered with humor, and his hard work is balanced with engagement with his classmates and his community. He is in many ways an ideal law student, and I am convinced that he will be an exceptional lawyer and make significant contributions to the profession. I have every confidence that he will be an asset to your chambers, and I recommend him to you without reservation.

Please don't hesitate to contact me with any questions about Christian's candidacy.

Sincerely,

David C. Baluarte

David Baluarte - BaluarteD@wlu.edu

Clinical Professor of Law

David Baluarte - BaluarteD@wlu.edu

WASHINGTON AND LEE UNIVERSITY  
SCHOOL OF LAW  
LEXINGTON, VA 24450

June 08, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I am on the faculty at Washington and Lee University School of Law, and am writing to you in very enthusiastic support of Christian Sanchez Leon, a rising third year law student at W&L who is seeking a clerkship with your court. I am a fan of W&L's students in general, but Mr. Sanchez Leon is one of the brightest, most engaged, hardest-working, and truly delightful students I have taught in recent memory.

Mr. Sanchez Leon was enrolled in my Fall 2022 Evidence class. At W&L we keep our class sizes small – my Evidence class had 43 students enrolled – so as faculty we tend to get to know our students well. Additionally, because Mr. Sanchez Leon was among a handful of students who availed himself of opportunities I offered my Evidence students to work with me directly and in small groups, I came to know Mr. Sanchez Leon better than many students enrolled in the course. He is also one of only six students who earned an A in the course, and of those six earned the second highest grade overall. As I explain more fully below, I am confident that Mr. Sanchez Leon will be an asset to any court that has the pleasure of working with him in its chambers.

I teach my Evidence course with an experiential bent. To that end, in addition to requiring extensive case readings, deep engagement with the rules, and a cumulative multiple-choice final exam, I employ a problem-based approach that demands significant in-class discussion. I also require the students to draft and argue two complex motions in limine involving issues arising under Federal Rules of Evidence 401-404 and 702-703. As a consequence, I am able to develop deeper insights into my Evidence students' strengths and weaknesses than is perhaps typical of a traditional law school classroom.

Mr. Sanchez Leon was one of the most active and incisive participants in what was a very smart and lively class overall. He was eager to wrestle with challenging issues. His in-class work and our out-of-class discussions demonstrated that he is an inquisitive, thorough, creative thinker, and that he is a close reader with very strong analytical skills. Mr. Sanchez Leon also performed extremely well in his motion in limine oral arguments. Mr. Sanchez has excellent communication skills in general, and during his oral arguments he was poised, self-assured, clear and creative. He also did an excellent job engaging with me (as the court) when I pressed him with difficult questions.

Mr. Sanchez Leon's written work on his two motions in limine was also very, very strong. Both of his motions made excellent use of the applicable authority, and both were cogent, creative, well-organized, well-argued, and thorough without sacrificing conciseness. Mr. Sanchez Leon's written work was among the very strongest in my entire class, a fact made even more impressive when one considers that English is Mr. Sanchez Leon's second language and because he did not move to the U.S. until later in his young life he did not have the benefit of an English language education in his early years. Based on my experience with his work, I am confident that Mr. Sanchez Leon's writing and analytical skills would serve you well in your chambers.

I am also confident that you will find Mr. Sanchez Leon to be a wonderful colleague. He is truly a delight to be around – he is bright, collaborative, kind-hearted, and hard-working. He was a pleasure to teach and work with, and I am confident that he will bring much to your chambers.

I would welcome the opportunity to talk with you regarding Mr. Sanchez Leon, and I encourage you to contact me with any questions you may have.

Very truly yours,

C. Elizabeth Belmont  
Clinical Professor of Law

Elizabeth Belmont - [belmontb@wlu.edu](mailto:belmontb@wlu.edu)

WASHINGTON AND LEE UNIVERSITY  
SCHOOL OF LAW  
LEXINGTON, VA 24450

June 08, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I understand that Christian Sanchez-Leon has applied for a clerkship in your chambers, and I write to recommend him to you with my utmost enthusiasm.

By way of context, I have had Christian as a student in two classes (Civil Procedure in the fall of 2021 and Federal Jurisdiction and Procedure in the fall of 2022), and I am thrilled that he has expressed interest in working for me as a research assistant. He is, in short, among the most outstanding students with whom I have had the privilege to work.

From the moment I met Christian when he was a prospective student at W&L, I immediately sensed both his seriousness of purpose and his disarming demeanor. Both in class and during our many office-hours conversations, Christian has demonstrated tremendous intellectual acumen and an ability to home in on the hardest part of a problem. He never seemed phased when I called on him in class. Instead, he always welcomed a challenge, working through thorny issues with patience, rigor, and creativity. I still chuckle about a few occasions during his first semester of law school when he came to my office, worried that he was not understanding the material. As we started to talk, I realized that Christian actually had mastered the material—the black-letter law, courts’ methodological moves, and the like. What was bothering him were doctrinal inconsistencies that he had sussed out or the bedeviling questions that continue to baffle scholars.

Christian’s clarity of thought shines through in the precise way that he formulates questions and thinks through novel problems. His writing also displays that same clarity and organization—all the more impressive, considering that English is his second language. In both classes that he has taken with me, Christian has easily earned an A, writing exam responses that ranked among the very best in the class.

Finally, Christian is a true delight to work with in class and beyond. In both Civil Procedure and Federal Jurisdiction, I often put students into small groups to work through short problem sets together. As they do so, I migrate around the classroom and eavesdrop on the conversations. Christian was always engaged and made vital contributions. Just as impressively, though, he listened carefully to his classmates and worked with them in a spirit of genuine collaboration. From conversations with students and other professors, I know that he commands enormous respect and admiration throughout the law school.

All of this is to say that Christian is wonderfully intelligent and a pleasure to work with. I am always delighted when he comes by my office to talk about class, writing projects, and career aspirations. I often find that I learn as much from him as he does from me, and I trust that you would have the same experience. In short, he has earned my highest recommendation, and I hope that you will contact me if I can tell you anything else that would be helpful. I never tire of singing his praises.

Sincerely,

Alan M. Trammell  
Associate Professor of Law

Alan Trammell - atrammell@wlu.edu

**Christian Sanchez Leon**

sanchezleon.c24@law.wlu.edu • 402 South Main St., Apt. 4, Lexington, Virginia 24450 • (786) 901-0920

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The attached writing sample is an internal memorandum I wrote while working as a judicial intern with the United States District Court for the Southern District of Florida last summer. As required by court policy, I have changed all case-specific references, including the names, case numbers, and identifying information, and I have added the label of “Draft.” I received permission from Judge Darrin P. Gayles to use this writing sample in my clerkship applications. This memorandum has not been edited by others.

In this memorandum, I examined whether Fla. Stat. § 627.70152, which required Plaintiffs to file a pre-suit notice, may apply retroactively to an insurance policy that was contracted prior to the enactment of the statute, thus mandating the dismissal of the present case. This was the first decision issued by Judge Gayles on whether this was a substantive or procedural statute, and there was no binding decision by federal or state courts on this particular issue prior to his decision.

## M E M O R A N D U M

DRAFT

**To:** The Honorable Darrin P. Gayles  
**From:** Christian Sanchez Leon, Legal Intern  
**Re:** Motion to Dismiss Hearing  
**Date:** August 8, 2022

**22-cv-29561      Bell et al v. Lynchburg Insurance**

Plaintiffs, Ben and Julia Bell, brought this action for breach of contract against Defendant insurance company for Defendant's failure to cover damages caused by wind and water to Plaintiffs' property. [ECF No. 1-2]. In their Complaint, Plaintiffs alleged the damage to the property occurred on September 10, 2017, while the policy was in effect. *Id.* On January 13, 2022, Defendant filed a Motion to Dismiss Plaintiffs' Complaint (the "Motion"). [ECF No. 8].<sup>1</sup> Specifically, Defendant argues that the Complaint fails to allege compliance with the required pre-suit notice and instead states in a conclusory fashion that all conditions precedent to bringing the action were met. Defendant claims that Plaintiffs did not in fact provide the required notice of intent to sue, and Plaintiffs' failure to do so mandates dismissal under Fla. Stat. § 627.70152.

**BACKGROUND RELEVANT TO MOTION**

- Plaintiffs and Defendant entered into a property insurance contract beginning September 1, 2017. [ECF No. 1-2 at 5]. The property suffered damages on or about September 10, 2017. [ECF No. 1-2 at ¶ 6].
- Fla. Stat. § 627.70152 became effective on July 1, 2021. This statute applies to all suits not brought by an assignee arising under a residential or commercial property insurance policy, including a residential or commercial property insurance policy issued by an eligible surplus lines insurer. Fla. Stat. § 627.70152(1). Therefore, it applies to the present case.
- This statute requires an insured to file a pre-suit notice at least ten business days prior to filing the suit. *Id.* § 627.70152(3). This statute also mandates dismissal if the pre-suit notice requirement is not met. *Id.* § 627.70152(5). On October 22, 2021, Plaintiffs filed the

<sup>1</sup> Originally, Plaintiffs failed to respond to the Motion, and you granted the Motion by default. [ECF No. 13]. Plaintiffs subsequently moved for an extension and for vacatur, which you granted on March 21, 2022. [ECF No. 21]. In that Order, you directed the parties to file supplemental briefing related to the issue of whether the statute at issue affects the ability to obtain attorney's fees and, if so, if that change is substantive or procedural. *Id.* The supplemental briefing was completed on April 4, 2022. [ECF Nos. 22, 23].

Complaint in the 17th Judicial Circuit of Broward County, Florida, which was removed to this Court on January 6, 2022. [ECF No. 1].

- Plaintiffs admit that they did not file a pre-suit notice [ECF No. 14 at ¶ 9], but argue that although the statute took effect prior to the commencement of this suit, it should not apply retroactively because the policy in issue was created prior to the statute. Plaintiffs first argue that the legislature did not express clear intent that the statute should apply retroactively. Plaintiffs also argue that applying the statute retroactively violates constitutional principles because it impacts the award of attorney's fees, which is a substantive, not procedural right; hence, it cannot apply retroactively to a contract.
- As instructed and for the purpose of this analysis, I will assume *arguendo* that the legislature intended the statute to apply retroactively and focus on whether the statute at issue is substantive or procedural.

### **ISSUE PRESENTED**

Whether Fla. Stat. § 627.70152, which in some circumstances limits the amount of attorney's fees and cost to claimants, is a substantive statute that cannot apply retroactively.

### **RELEVANT PROVISIONS UNDER FLA. STAT. § 627.70152**

Fla. Stat. § 627.70152

(3) Notice.--

(a) As a condition precedent to filing a suit under a property insurance policy, a claimant must provide the department with written notice of intent to initiate litigation on a form provided by the department. Such notice must be given at least 10 business days before filing suit under the policy, but may not be given before the insurer has made a determination of coverage under s. 627.70131.

(5) Dismissal of suit.—

A court must dismiss without prejudice any claimant's suit relating to a claim for which a notice of intent to initiate litigation was not given as required by this section or if such suit is commenced before the expiration of any time period provided under subsection (4), as applicable.

(8) Attorney fees.--

(a) In a suit arising under a residential or commercial property insurance policy not brought by an assignee, the amount of reasonable attorney fees and costs under s. 626.9373(1) or s. 627.428(1) shall be calculated and awarded as follows:

1. **If** the difference between the amount obtained by the claimant and the presuit settlement offer, excluding reasonable attorney fees and costs, is **less than 20 percent** of the disputed amount, each party pays its own attorney fees and costs, and **a claimant may not be awarded attorney fees** under s. 626.9373(1) or s. 627.428(1).

2. **If** the difference between the amount obtained by the claimant and the presuit settlement offer, excluding reasonable attorney fees and costs, is **at least 20 percent but less than 50 percent** of the disputed amount, **the insurer pays the claimant's attorney fees and costs** under s. 626.9373(1) or s. 627.428(1) **equal to the percentage of the disputed amount obtained times the total attorney fees and costs**.

3. **If** the difference between the amount obtained by the claimant and the presuit settlement offer, excluding reasonable attorney fees and costs, is **at least 50 percent** of the disputed amount, **the insurer pays the claimant's full attorney fees and costs** under s. 626.9373(1) or s. 627.428(1).

(b) In a suit arising under a residential or commercial property insurance policy not brought by an assignee, **if a court dismisses a claimant's suit** pursuant to subsection (5), **the court may not award to the claimant any incurred attorney fees** for services rendered before the dismissal of the suit. When a claimant's suit is dismissed pursuant to subsection (5), the court may award to the insurer reasonable attorney fees and costs associated with securing the dismissal.

(c) In awarding attorney fees under this subsection, a strong presumption is created that a lodestar fee is sufficient and reasonable. Such presumption may be rebutted only in a rare and exceptional circumstance with evidence that competent counsel could not be retained in a reasonable manner.

(emphases added).

### RELEVANT CASES

*Menendez v. Progressive Exp. Ins. Co.*, 35 So. 3d 873 (Fla. 2010).

- The Florida Supreme Court considered an amendment to Florida's Motor Vehicle No-Fault Law that added a similar pre-suit notice provision. Under the amendments, the insured was required to provide a pre-suit notice of intent to litigate, and the insurer was provided additional time to pay an overdue claim. If the insurer paid the overdue claim within the additional time, the insured was precluded from bringing suit and the insurer was shielded from a claim for attorneys' fees.
- The Florida Supreme Court held that the statute, when viewed as a whole, was a substantive statute and could not apply retroactively. The court noted four provisions that were problematic: "those which (1) impose a penalty, (2) implicate attorneys' fees, (3)

grant an insurer additional time to pay benefits, and (4) delay the insured's right to institute a cause of action." *Id.* at 878. The Court reiterated that "statutes with provisions that impose additional penalties for noncompliance or limitations on the right to recover attorneys' fee do not apply retroactively." *Id.*

**Decisions regarding Fla. Stat. § 627.70152 by the Middle and Southern District of Florida**

***Art Deco 1924 Inc. v. Scottsdale Ins. Co.*, No. 21-62212-CIV, 2022 WL 706708 (S.D. Fla. Mar. 9, 2022).**

- Granting motion to dismiss.
- Holding that Fla. Stat. § 627.70152 was procedural and hence applied retroactively since it merely limited attorney's fees to the claimant "if a suit is dismissed for failure to provide pre-suit notice." *Id.* at 2. The Court reasoned that § 627.70152(8)(b) was fundamentally different than the fee scheme in *Menendez* because the statute there "altogether prohibited attorney's fees in particular circumstances[.]" whereas the statute at issue merely says that if a suit is dismissed for failure to provide pre-suit notice, the Court may not award attorney's fees to the claimant, and other than that, attorney's fees remain recoverable to a prevailing claimant. *Id.*

***Dozois v. Hartford Ins. Co. of the Midwest*, No. 3:21-CV-951-TJC-PDB, 2022 WL 952734 (M.D. Fla. Mar. 30, 2022).**

- Denying motion to dismiss.
- Holding that Fla. Stat. § 627.70152 supposed a substantive change and should not apply retroactively because it imposed new penalties, duties, and obligations. The Court explained that there was a new penalty on insureds that do not file a pre-suit notice by dismissing the case without prejudice and precluding claimant from an award of attorneys' fees for any services rendered before the dismissal. Furthermore, the Court analogized this statute to the one in *Menendez* because it provides insurers with additional time to accept coverage and delays the insured's right to institute a cause of action, which are requirements that were not in place when plaintiffs' policy went into effect.
- The Court explained that Florida circuit courts that distinguish similar cases from *Menendez* analyzed the pre-suit notice provision in isolation, whereas *Menendez* took a more holistic view of the provision. Furthermore, the Court also addressed the holding of

the *Art Deco 1924* Court (case by Judge Doe referenced above). While the Court conceded that the fee scheme was different in Fla. Stat. § 627.70152 from the one in *Menendez* because it does not entirely preclude attorney’s fees, the Court explained that this statute nevertheless limits, in some circumstances severely, attorneys’ fees and imposes a penalty that did not exist before. *Id.* at \*2.

***Spyredes v. Scottsdale Ins. Co.*, No. 22-CV-60406, 2022 U.S. Dist. LEXIS 69176 (S.D. Fla. Apr. 14, 2022).**

- Denying motion to dismiss as relevant to this case (granted in part to require plaintiff to amend the complaint to cure an irrelevant deficiency).
- Explaining that “even if the Florida Legislature intended for retroactive application, a court must reject such an application if the statute impairs a vested right, creates a new obligation, imposes a new penalty, or attaches new legal consequences to events completed before the statutory enactment.” *Id.* at 2. The Court stated that it was particularly persuaded by the reasoning set forth in *Dozois* (listed above) when determining that because § 627.70152 “imposes new duties, obligations, and penalties, it does not apply retroactively[.]” *Id.*

***Rosario v. Scottsdale Ins. Co.*, No. 21-24005-CIV, 2022 WL 196528 (S.D. Fla. Jan. 21, 2022).<sup>2</sup>**

- Denying motion to dismiss.
- The Court read *Menendez*’s holding broadly and determined that § 627.70152 creates a substantive change to the law because it “substantively alters an insurer’s obligation to pay and an insured’s right to sue under the contract,” and that the notice requirement undoubtedly “creates a new obligation” for the insured. *Id.* at 1.

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<sup>2</sup> You and Joe previously discussed this case via email on 3/6/22 and then subsequently in person. Joe believes part of the reason you didn’t want to fully rely on this reasoning was because it may have been impacted by the fact that the defendant did not file a reply to dispute the issue, which Judge John noted in his reasoning in *Rosario*.

### ANALYSIS

**I recommend denying the Defendant's Motion to Dismiss, finding that the statute cannot apply retroactively because the amendments included substantive changes to the contracted policy.**

This statute is likely to be substantive because Fla. Stat. § 627.70152 limits in some circumstances Plaintiffs' ability to obtain attorney's fees and because it imposes new penalties, duties, and obligations. The plain language of the statute indicates that there are circumstances in which Plaintiffs' ability to obtain attorney's fees and the amount of the attorney's fees is limited. Subsection 8 provides three circumstances specific circumstances: (1) if the difference between the amount obtained by the claimant and the pre-suit settlement offer is less than 20% of the disputed amount, the claimant may not be awarded attorney's fees; (2) if the difference between the amount obtained by the claimant and the pre-suit settlement offer is at least 20% but less than 50% of the disputed amount, attorney's fees are limited to the percentage of the disputed amount obtained times the total attorney's fees and costs; and (3) if a court dismisses a claimant's suit for failure to comply with the required pre-suit notice, the court may not award to the claimant any incurred attorney's fees for service rendered before the dismissal.

The Florida Supreme Court has held that a statute should not apply retroactively "if the statute impairs a vested right, creates a new obligation, or imposes a new penalty." *Menendez v. Progressive Exp. Ins. Co., Inc.*, 35 So. 3d 873, 877 (Fla. 2010). Furthermore, it is well established under Florida law that a statutory right to collect fees constitutes a substantive right. *Moser v. Barron Chase Secs., Inc.*, 783 So. 2d 231, 236 (Fla. 2001). When examining statutes like the one at issue, Florida state district courts have concluded that statutory provisions which impose limitations on the right to recover attorney's fees are substantive in nature. *Bionetics Corp. v. Kenniasty*, 69 So. 3d 943, 948 (Fla. 2011). Similarly to the statute in *Menendez*, Fla. Stat. § 627.70152 limits and in specific circumstances completely precludes attorney's fees. Therefore, if the Court finds that Fla. Stat. § 627.70152 limits at least in some circumstances Plaintiffs' ability to obtain attorney's fees, the Court should conclude that this change is substantive under Florida law and that this statute should not apply retroactively to the present contract.

Defendant includes in its supplemental response multiple cases in which Florida courts have dismissed cases after finding that the pre-suit notice provision of § 627.70152 was procedural. However, the courts cited looked at the notice provision § 627.70152(3)(a) in isolation. *See e.g.*,

*Art Deco 1924 Inc.*, 2022 WL 706708 at \*1 (“The parties’ dispute therefore comes down to the whether **the pre-suit notice provision** in issue is substantive or procedural.”) (emphasis added); *Hevia v. Certain Underwriters at Lloyd's, London*, Case No. 2023-024464-CA-01 (Fla. 11th Cir. Ct. March 9, 2022) (“The Court finds the notice requirement of Florida Statute § 627.70152(3) procedural in nature”) (emphasis added). Instead, this Court should conduct a holistic analysis of the statute following the reasoning provided by the Florida Supreme Court in *Menendez*, reading the complete statute to determine whether it is substantive or procedural in nature.

When doing so, the courts will first find that, as explained above, Fla. Stat. § 627.70152(8) limits in different certain circumstances the collection of attorney’s fees, which is a substantive change to the rights contracted under the insurance policy. Furthermore, similar to the statute analyzed in *Menendez*, the present statute has other problematic provisions that impose substantive changes. These include that the statute delays the insured’s right to institute a cause of action § 627.70152(3)(a) (insured has to wait 10 days after the notice to institute a cause of action), that it imposes a penalty § 627.70152(5) (the court is obligated to dismiss the case without prejudice if the insured fails to comply with the notice requirement), and that it provides insurers with additional time to accept coverage. These provisions create substantive changes to the contract which restricts retroactive application. *See e.g., Williams v Foremost Prop. & Cas. Ins. Co.*, No. 3:21-cv-926-MMH-JBT, 2022 WL 3139374 at \*4 (M.D. Fla. Aug. 5, 2022) (“[T]he Court concludes that Section 627.70152 affects substantive rights by imposing new duties, obligations, and penalties and cannot be applied retroactively to Williams's claim under the Policy”).

### CONCLUSION

If you find the statute is substantive due to the potential limitations that it imposes on the ability to collect attorney’s fees by Claimant, the Court should deny Defendant’s Motion to Dismiss.

**Applicant Details**

First Name **Claire**  
 Middle Initial **E**  
 Last Name **Sandberg**  
 Citizenship Status **U. S. Citizen**  
 Email Address [claire.sandberg@uky.edu](mailto:claire.sandberg@uky.edu)  
 Address

**Address**  
**Street**  
**750 Shaker Drive**  
**City**  
**Lexington**  
**State/Territory**  
**Kentucky**  
**Zip**  
**40504**  
**Country**  
**United States**

Contact Phone Number  
**859-893-4740**

**Applicant Education**

BA/BS From **Belmont University**  
 Date of BA/BS **May 2020**  
 JD/LLB From **University of Kentucky College of Law**  
[http://www.nalplawsonline.org/ndlsdir\\_search\\_results.asp?lscd=61801&yr=2011](http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=61801&yr=2011)  
 Date of JD/LLB **May 4, 2024**  
 Class Rank **33%**  
 Law Review/Journal **Yes**  
 Journal(s) **Kentucky Law Journal**  
 Moot Court Experience **No**

**Bar Admission**

### **Prior Judicial Experience**

Judicial  
Internships/           **No**  
Externships  
Post-graduate  
Judicial Law       **No**  
Clerk

### **Specialized Work Experience**

#### **Recommenders**

Lollar, Cortney  
cortney.lollar@uky.edu  
859-257-3250

Grise, Jane  
jane.grise@uky.edu  
859-218-0634

Madjar, Christine  
christine.madjar@gmail.com  
440-334-3240

**This applicant has certified that all data entered in this profile and  
any application documents are true and correct.**

Claire Sandberg  
750 Shaker Drive, Apt 509  
Lexington, KY 40504

Tuesday, June 20, 2023

The Honorable Jamar K. Walker  
600 Granby St.  
Norfolk, VA 23510

Dear Judge Walker,

My name is Claire Sandberg. I am a rising 3L at University of Kentucky J. David Rosenberg College of Law. My cousin (who is more like a sister) is a Navy Nurse who is currently stationed in Norfolk. My college best friend has lived in Norfolk since we graduated. I had the opportunity to visit them both right before I began law school and I fell in love with the area. I would be overjoyed to make the city my home. As such, I am applying for your 2024-2025 clerkship.

My prior experience has prepared me for clerking. As my resume highlights, I have dedicated extensive time developing strong research and writing skills, even before starting law school. During law school, I have taken advantage of many opportunities to enhance my legal research abilities. This includes working as a Research Assistant, completing a class that required a 20-page research paper, and becoming an Articles Editor for *Kentucky Law Journal*. As an intern, extern, and law clerk, I wrote memos and drafted motions that required complex research. Additionally, I have attended many court proceedings to familiarize myself with the litigation process.

Please find my application materials attached. My letters of recommendations are forthcoming. My references include:

Courtney Lollar	<a href="mailto:courtney.lollar@uky.edu">courtney.lollar@uky.edu</a> 859-257-3250
Jane Grise	<a href="mailto:jane.grise@uky.edu">jane.grise@uky.edu</a> 859-218-0634
Christine Madjar	<a href="mailto:christine.madjar@gmail.com">christine.madjar@gmail.com</a> 440-334-3240

I am happy to provide additional information upon request. I can be reached at 859-893-4740 or at [claire.sandberg@uky.edu](mailto:claire.sandberg@uky.edu). Thank you very much for considering my application.

Respectfully,

*Claire Sandberg*  
Claire Sandberg

## Claire Emiko Sandberg

750 Shaker Drive, Apt. 509, Lexington, KY 40504 · (859) 893-4740 · claire.sandberg@uky.edu

### EDUCATION

#### University of Kentucky, Rosenberg College of Law, Lexington, KY

Juris Doctor Candidate, May 2024

GPA: 3.334 Rank 47/140 (Top 33.6%)

- *Kentucky Law Journal*
  - Volume 112, Articles Editor
  - Volume 111, Staff Editor
    - Recipient, Book 2, Finchman Article Source & Cite Book Award
    - Recipient, Book 4, Spencer Article Source & Cite Book Award
- Legal Clinic, upcoming for 3L year
- Research Assistant for Jane Gris , Summer 2023
- Student Public Interest Law Foundation (SPILF)
  - Vice President for Special Events, 2022-2023
  - Pro Bono Chair, 2023-2024
- 2L Representative, American Civil Liberties Union UKRCOL Chapter
- 1 of 8 students chosen for Contracts Class Moot Court; won argument in front of Honorable Melissa Moore Murphy, Fayette County District Judge

#### Belmont University, Nashville, TN

Bachelor of Science: Environmental Science, Belmont Scholar, May 2020

GPA: 3.743

- Honors Program, Curriculum in the Classics and LEAD Intensive Track
  - Book: *The Spaceship School: Reflections on Culture and Challenges in my Hometown*
- Recipient, David Hill Environmental Sciences Award, 2020
- Board Member, World Culture Fest, 2020
- Undergraduate Research Symposium, 2018-2020
- Participant, University Ministries Service Year, 2017-18
- Study Abroad: Semester in Spain, Maymester in Costa Rica, and Summer in Australia
- Courses of Interest: Politics of Knowledge, Grant Writing, Statistics, Intercultural Communication, Global Cities, Social Change and Communication, American Government

### PROFESSIONAL EXPERIENCE

#### Legal Experience

- **Department of Public Advocacy, Interim Clerk** Summer 2023
  - Assisted in legal research, arraignments, and all aspects of legal representation of indigent clients. Attended proceedings in Fayette County District and Circuit Courts.
- **Kentucky Innocence Project, Extern** Fall 2022-Spring 2023
  - Advocated for the factual innocence of someone believed to be wrongly convicted
  - Conducted research, drafted memorandums, and attended court proceedings
- **Legal Aid of the Bluegrass, Clerk** Fall 2022
  - Assisted in Expungement Clinics and aided in filing the resulting documents
  - Conducted legal research and wrote memorandum for internal use
  - Drafted a petition for divorce and witnessed the drafting and signing of wills
- **Kentucky Equal Justice Center, Maxwell Street Legal Clinic, Intern** Summer 2022
  - Researched and evaluated various immigration claims
  - Prepared immigration applications: DACA, U-Visa (abuse), T-Visa (trafficking)
  - Met with existing and potential clients

**AmeriCorps Homes for All, Community Action Council, Case Worker** Aug. 2020-July 2021

- Provided case management and holistic support for Kentuckians experiencing homelessness
- Managed a twenty-person caseload, connecting each individual to community resources that provided job opportunities, healthcare options, and general tools for self-sufficiency
- Successfully empowered one family to “graduate” from the program during her year of service

**Undergraduate Internships** (writing and research emphasis)

- **Cheekwood Estate and Gardens, Office of Development Intern** Spring 2020
  - Conducted research, collected data, and crafted profiles on persons of interest for CEO
  - Assisted with copy development and editing for internal and external materials
  - Assisted with donor cultivation event planning and execution
  - Maintained highest discretion regarding donor records and sensitive information
- **Nashville Department of General Services, Div. of Sustainability Intern** Summer 2019
  - Attended public events and represented the Division of Sustainability
  - Supported team in Metro Nashville reports (Green New Deal, Greenhouse Gas report, High Performance Building Report), reading for general edits and readability
  - Researched sustainability initiatives in other cities for the Division Director
  - Supported digital strategy by generating ideas, writing content, and proof-reading copy
- **Nashville Sites, Intern** Spring 2019
  - Designed, wrote, and tested an immersive *Music and Music City* walking tour
  - Conducted research at the Nashville Historic Commission, the Country Music Hall of Fame, and various online archival resources
- **A Rocha Nashville** (Sustainability initiative), *Intern* Fall 2017 and Spring 2018
  - Researched and wrote content to be published on the A Rocha USA website
  - Edited information to be published on the global A Rocha website
  - Spoke at public events on behalf of A Rocha

**Other Part-Time Employment**

- **Georgetown College, COVID Meal Delivery Service**, Spring 2021
- **CK Tactical Security, Security for Special Events** (primarily at Kentucky Horse Park), 2021
- **Belmont University**
  - **School of Music, Practice Room Monitor** 2019-20
    - Provided after-hour presence for School of Music buildings
  - **Office of Admissions, Greeter and Overnight Host** 2017-18
    - Planned and executed overnight visits with prospective students
  - **Office of Development, Data Entry Student Worker** 2016-17
    - Assisted with research on donors and alum of Belmont University
    - Logged donations and maintained proper discretion with sensitive material
    - Provided support for donor events and projects
- **Taco Mamacita, Server**, Summer 2019
  - Ensured high quality customer service through effective communication, problem-solving, quick thinking and patience in a fast-paced environment
- **Boone Tavern Historic Hotel, Front Desk, School Breaks** 2017-18
  - Ensured both distinguished and common guests enjoyed their time in Berea
  - Assisted with event execution including weddings and corporate events
  - Provided excellent customer service through crisis management and problem-solving
- **Feeding Kentucky, Data Entry**, Summer 2016
  - Entered data related to produce acquired through the Farms to Foodbanks program
  - Offered additional volunteer work including annual Foodbank Day at the State Capitol
- **Nanny and Babysitter**, 2014-2016
  - Primarily supported family through father’s chemotherapy and passing

**Interests:** walking (*not* running) · game nights · traveling (born in Japan)

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Name: Sandberg, Claire Emiko  
 Student SSN: \*\*\*\*\*6920  
 Student Number: 12168066  
 Print Date: 06/07/2023 Page Number: 1 of 1

UNOFFICIAL TRANSCRIPT

To order an official transcript, go to:  
 myUK > myRecords > Official Transcripts

To view this information online, go to:  
 myUK > Degree Planning and Registration  
 > Menu > Academic History

Requested by: Claire Emiko Sandberg  
 Law Academic Record

SCHOOLS ATTENDED

Secondary Schools:  
 Berea Community School  
 Higher Education Institutions:  
 Belmont University 07/2021 - 07/2021  
 Belmont University 06/2021 - 06/2021  
 Belmont University 05/2021 - 05/2021

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**2021 Fall Semester**

Program:  
 College of Law  
 Juris Doctor  
 Major: Law

CBS_NUM	COURSE_TITLE	GRADE	HOURS	QPTS	AHRS	EHRS	QHRS	QPTS	GPA
LAW 805	TORTS	B	4.0	12.00					
LAW 810	CRIMINAL LAW	A-	3.0	11.10					
LAW 815	CIVIL PROCEDURE I	B+	3.0	9.90					
LAW 804	LEGAL RESRCH & WRITING	S	0.0	0.00					
LAW 801	SKILLS								
LAW 801	CONTRACTS/SALES I	A	3.0	12.00					
		AHRS	EHRS	QHRS	QPTS	GPA			
Semester		13.0	13.0	13.0	45.00	3.462			
Cumulative		13.0	13.0	13.0	45.00	3.462			

**2022 Spring Semester**

CBS_NUM	COURSE_TITLE	GRADE	HOURS	QPTS	AHRS	EHRS	QHRS	QPTS	GPA
LAW 802	CONTRACTS/SALES II	C+	3.0	6.90					
LAW 804	LEGAL RESRCH & WRITING	A	4.0	16.00					
LAW 820	SKILLS								
LAW 820	CONSTITUTIONAL LAW I	B+	3.0	9.90					
LAW 817	CIVIL PROCEDURE II	A-	3.0	11.10					
LAW 807	PROPERTY	B-	4.0	10.80					
		AHRS	EHRS	QHRS	QPTS	GPA			
Semester		17.0	17.0	17.0	54.70	3.218			
Cumulative		30.0	30.0	30.0	99.70	3.323			

**2022 Summer Session**

CBS_NUM	COURSE_TITLE	GRADE	HOURS	QPTS	AHRS	EHRS	QHRS	QPTS	GPA
LAW 835	PROFESSIONAL RESPONSIBIL	B	3.0	9.00					
LAW 969	IMMIGRATION LAW	P	2.0	0.00					
	EXTERNSHIP								
	Pass Fail Grade Scale								
		AHRS	EHRS	QHRS	QPTS	GPA			
Semester		5.0	5.0	3.0	9.00	3.000			
Cumulative		35.0	35.0	33.0	108.70	3.294			

**2022 Fall Semester**

CBS_NUM	COURSE_TITLE	GRADE	HOURS	QPTS	AHRS	EHRS	QHRS	QPTS	GPA
LAW 971	DEPT. PUBLIC ADV	P	2.0	0.00					
	INNOCENCE PROJ EXT								
	Pass Fail Grade Scale								
LAW 915	FAMILY LAW	A	3.0	12.00					
LAW 860	TAXATION I	B-	4.0	10.80					
LAW 811	CRIMINAL PROCEDURE I	B	3.0	9.00					
		AHRS	EHRS	QHRS	QPTS	GPA			
Semester		12.0	12.0	10.0	31.80	3.180			
Cumulative		47.0	47.0	43.0	140.50	3.267			

**2023 Spring Semester**

CBS_NUM	COURSE_TITLE	GRADE	HOURS	QPTS	AHRS	EHRS	QHRS	QPTS	GPA
LAW 851	BUSINESS ASSOCIATIONS	B	4.0	12.00					
LAW 890	EVIDENCE	A-	4.0	14.80					
LAW 961	MOOT COURT	P	1.0	0.00					
	Pass Fail Law Grade Scale								
LAW 814	CRIMINAL TRIAL PROCESS	A	3.0	12.00					
LAW 906	SEMINAR: ALT VISIONS OF	A-	2.0	7.40					
	CRIM JUSTICE								
LAW 971	DEPT. PUBLIC ADV	P	2.0	0.00					
	INNOCENCE PROJ EXT								
	Pass Fail Law Grade Scale								
		AHRS	EHRS	QHRS	QPTS	GPA			
Semester		16.0	16.0	13.0	46.20	3.554			
Cumulative		63.0	63.0	56.0	186.70	3.334			

**2023 Summer Session**

CBS_NUM	COURSE_TITLE	GRADE	HOURS	QPTS	AHRS	EHRS	QHRS	QPTS	GPA
LAW 825	THE NEGOTIATING PROCESS	---	2.0	0.00					
		AHRS	EHRS	QHRS	QPTS	GPA			
Semester		2.0	0.0	0.0	0.00	0.000			
Cumulative		65.0	63.0	56.0	186.70	3.334			

**2023 Fall Semester**

CBS_NUM	COURSE_TITLE	GRADE	HOURS	QPTS	AHRS	EHRS	QHRS	QPTS	GPA
LAW 920	ADMINISTRATIVE LAW	---	3.0	0.00					
LAW 822	CONSTITUTIONAL LAW II	---	3.0	0.00					
LAW 813	CAPITAL PUNISHMENT	---	3.0	0.00					
LAW 972	LEGAL CLINIC	---	3.0	0.00					
		AHRS	EHRS	QHRS	QPTS	GPA			
Semester		12.0	0.0	0.0	0.00	0.000			
Cumulative		77.0	63.0	56.0	186.70	3.334			

\*\*\* End of Law Professional Academic Record \*\*\*

UNOFFICIAL

**Belmont University**  
Nashville, TN 37212

SSN:\*\*\*-\*\*-6920

Student No:B00522120

Date of Birth: 02/26/98

Date Issued:12-JUN-2023 OFFICIAL

**Record of** : Claire E. Sandberg

**Current Name:**Claire E. Sandberg

**Issued To :** CLAIRE EMIKO SANDBERG

**Course Level :** Undergraduate

**Current Program**

College : College of Sciences & Math

**Major:**

Environmental Science  
Honors

**Degree Information:**

Degrees Awarded Bachelor of Science 02-MAY-2020

**Primary Degree**

**Major:**

Environmental Science  
Honors

**Inst. Honors:**

Cum Laude

Subj	No.	Title	Cred	Grade	Pts	R
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**INSTITUTION CREDIT:**

Earned Hrs	GPA-Hrs	QPts	GPA
16.00	16.00	48.00	3.00

Good Standing

**Summer 2017**

CEM	3950	Australia: JCS PickPoison LAB	4.00	A	16.00
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Earned Hrs	GPA-Hrs	QPts	GPA
4.00	4.00	16.00	4.00

Good Standing

**Fall 2017**

CEM	1610	General Chemistry I	4.00	A	16.00
ENV	1000	Seminar Environmental Science	1.00	A	4.00
ENV	1110	Intro to Environmental Science	4.00	A	16.00
HON	2520	The Age of Exploration	3.00	A-	11.10
MTH	1151	Elementary Statistics Sciences	3.00	A	12.00

Earned Hrs	GPA-Hrs	QPts	GPA
15.00	15.00	59.10	3.94

Dean's List

Good Standing

**Spring 2018**

BIO	1120	Prin of Biology II	4.00	B+	13.20
CEM	1620	General Chemistry II	4.00	B	12.00
ENV	2410	Physical Princ of Envir Sci I	4.00	A	16.00
HON	2360	Sophomore Tutorial	1.00	A	4.00
HON	2600	Discovery and Revolution	3.00	A	12.00

Earned Hrs	GPA-Hrs	QPts	GPA
16.00	16.00	57.20	3.57

Dean's List

Good Standing

**Summer 2018**

BIO	3950	CostaRica:BiodiversityTropical	4.00	A	16.00
ENV	3950	CostaRica:TropicalConservation	3.00	A	12.00

Earned Hrs	GPA-Hrs	QPts	GPA
7.00	7.00	28.00	4.00

Good Standing

**Fall 2018**

BIO	2950	Spain: Botany	3.00	A-	11.10
ENG	3950	Abroad: Third-Year Writing	3.00	A	12.00
ENV	2950	Spain: Human Geography	3.00	A-	11.10
HON	3950	Spain: Social Change & Comm	3.00	A	12.00
HON	3950	Spain: Intercultural Comm	3.00	A	12.00

Earned Hrs	GPA-Hrs	QPts	GPA
15.00	15.00	58.20	3.88

Good Standing

**Spring 2019**

BIO	2400	Zoology	4.00	B	12.00
ENV	2730	Methods in Environ Science	3.00	A	12.00
HON	2400	Societies,Institutions, Teams	3.00	A	12.00
HON	3990	Digital Internship	3.00	A	12.00
PSC	1210	American Government	3.00	A-	11.10

Earned Hrs	GPA-Hrs	QPts	GPA
16.00	16.00	59.10	3.69

Dean's List

Subj	No.	Title	Cred	Grade	Pts	R
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**TRANSFER CREDIT ACCEPTED BY THE INSTITUTION:**

FA15 BEREACOLLEGE

CEM	100T	Foundations of Chemistry	4.00	TA-
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Earned Hrs	GPA-Hrs	QPts	GPA
4.00	4.00	14.80	3.70

SP16 BEREACOLLEGE

GEN	100T	Financial Literacy	1.00	TA
MTH	100T	Trigonometry with Applications	4.00	TA
WEL	201T	Required Activity Course	1.00	TA

Earned Hrs	GPA-Hrs	QPts	GPA
6.00	6.00	24.00	4.00

Subj	No.	Title	Cred	Grade	Pts	R
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**INSTITUTION CREDIT:**

**Fall 2016**

ECO	2210	Principles of Macroeconomics	3.00	A-	11.10
GLS	1100	Intro Global Leadership Studie	3.00	A	12.00
HON	1517	World Trad. of Faith & Reason	3.00	A-	11.10
HON	1520	Classical Civilizations	3.00	A-	11.10
SOC	1010	Introduction to Sociology	3.00	A-	11.10

Earned Hrs	GPA-Hrs	QPts	GPA
15.00	15.00	56.40	3.76

Dean's List

Good Standing

**Spring 2017**

COM	3150	Intercultural Communication	3.00	B+	9.90
GLS	1895	Global Cities	3.00	A-	11.10
HON	2110	The Medieval World	3.00	D+	3.90
HON	3310	Analytics:Math Models	4.00	B	12.00
INB	3300	International Business	3.00	A-	11.10

Belmont University  
Nashville, TN 37212

SSN:\*\*\*-\*\*-6920      Student No:B00522120      Date of Birth: 02/26/98      Date Issued:12-JUN-2023    OFFICIAL

Subj	No.	Title	Cred	Grade	Pts	R
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**INSTITUTION CREDIT:**  
Good Standing

**Fall 2019**

BIO	3030	General Ecology	4.00	A-	14.80
HON	3400	Leadership and Advocacy	3.00	A	12.00
HON	4400	LEAD Project Execution	3.00	A	12.00
HUM	3015	Jr.Cornerstone:ReadingFeminism	3.00	A	12.00
SET	4150	Grant Writing	3.00	A	12.00

Earned Hrs	GPA-Hrs	QPts	GPA
16.00	16.00	62.80	3.92

Dean's List  
Good Standing

**Spring 2020**

ENV	3500	Internship in Environ Science	3.00	A	12.00
ENV	4700	Environmental Research	4.00	A	16.00
HON	3200	Honors Seminar	3.00	W	0.00
HON	4000	Team Project Coordination	1.00	A	4.00
MTH	1160	Biostatistics Lab	1.00	A	4.00
SOC	3100	Politics of Knowledge	3.00	A	12.00

Earned Hrs	GPA-Hrs	QPts	GPA
12.00	12.00	48.00	4.00

Dean's List  
Good Standing

Transcript Totals		Earned Hrs	GPA Hrs	Points	GPA
TOTAL INSTITUTION		132.00	132.00	492.80	3.73
TOTAL TRANSFER		10.00	10.00	38.80	3.88
OVERALL		142.00	142.00	531.60	3.74
-----END OF TRANSCRIPT-----					



J. David Rosenberg  
College of Law

June 20, 2023

The Honorable Jamar K. Walker  
United States District Judge  
United States District Court for the Eastern District of Virginia  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, Virginia 23510

Dear Judge Walker,

I am writing to unconditionally recommend Claire Sandberg for a clerkship in your chambers. Ms. Sandberg has been a student in three of my classes – Criminal Procedure, Evidence, and a criminal justice seminar. Ms. Sandberg is a strong engaged student who is perceptive, diligent, and has a keen legal mind. I cannot recommend her highly enough.

I believe Ms. Sandberg's GPA and class rank undersell her legal acumen. Her grades this past semester are more reflective of her capabilities than those of previous semesters, manifesting a consistency more in line with my interactions with her than illustrated by her previous semesters. Ms. Sandberg's fluency with the class material and its intricacies is top notch. She listens intently in class and follows up with questions when seeking clarity on a particular point. She is an astute legal thinker and is adept at responding to probing questions, in class and out. In my seminar, she provided thoughtful reflections on the readings and played an active role in a robust class dialogue surrounding issues of criminal justice policy.

Ms. Sandberg is not only a strong intellectual thinker and writer, as evidenced by her high marks in Legal Research and Writing and key doctrinal courses such as Contracts I and Evidence, she has the focus, insight, and foresight of a person of more advanced years. At the same time, she is inquisitive, curious, and eager to learn. She is quite receptive to feedback and learns well by observing, doing, and reflecting. She is highly motivated but not necessarily driven by the standard measures of success. She always keeps the bigger picture in mind, contemplating the practical impacts of legal doctrine while enjoying the process of learning the law's nuances.

Ms. Sandberg's internal drive and self-sufficiency are matched by her friendliness and positive nature. She desires to ultimately work in the public interest sphere, although she is still in the process of determining in what capacity. She has an affinity for both indigent criminal defense and civil rights work. Ms. Sandberg is likable, kind, and an enjoyable person to be around. She is also a hard worker who has no trouble taking direction and who responds well to constructive criticism. She is well worth your serious consideration, as she will undoubtedly be an asset to any chambers.

Please do not hesitate to call me at (202) 321-7877 if you have any questions.

My best,

A handwritten signature in black ink, appearing to be 'CL' followed by a long, sweeping horizontal line.

Cortney Lollar  
Norman and Carole Harned Law and Public Policy Professor  
University of Kentucky Rosenberg College of Law  
620 S. Limestone  
Lexington, Kentucky 40506  
(202) 321-7877  
cortney.lollar@uky.edu

June 26, 2023

Dear Judge Jamar Walker:

I am writing this letter of recommendation in enthusiastic support for Claire Sandberg's application for a judicial clerkship. Ms. Sandberg is an excellent writer, a thorough researcher, and a creative thinker. I am confident that she will be an exceptional law clerk and an outstanding attorney.

I was Ms. Sandberg's Legal Writing Professor during her first year of law school. Because Legal Writing classes at UK are small and meet once or twice a week for the entire year, I became familiar with her work. In the fall, she wrote a short memo as well as a longer memo that required research. In the spring, she wrote a brief and did an oral argument. In addition to our class meetings, I met individually with her, and all students, on at least five occasions. At these meetings, I reviewed students' written work and critiqued their oral argument.

Ms. Sandberg was a top student in the class. She was an excellent writer who wrote in a clear and concise manner. She was also an excellent researcher who located key cases and did thorough research on all pertinent topics. She wrote one of the best appellate briefs in the spring semester and did an excellent oral argument. The brief was persuasive, included good cases, was well organized, and contained excellent case analysis. In her oral argument, she demonstrated a knowledge of the law, an ability to explain complex subjects in a clear way, and an ability to answer questions directly.

Ms. Sandberg displayed a maturity and interest in the class that was different from other students. She was curious and asked good questions. At the end of her first year, she submitted an application to me for a research assistant position. She had applied along with a rising third year student and several other rising second year students. Because the rising third year student had law review experience and I needed someone who could check and format hundreds of footnotes, he got the job. However, Ms. Sandberg remained in contact with me. When another position opened this spring for a research assistant position, she applied. I hired her and have been extremely impressed with her research and writing. Her research has been truly exceptional. In a short time, she was able to get up to speed on a topic she had never researched, i.e., why do women perform at a lower level on multiple-choice exams than men. This is important for legal education because half of the current bar exam is composed of multiple-choice questions. The research is complicated as it involves delving into papers written by psychologists, educational experts, economists, and lawyers. From my personal experience in researching this topic, I know that it is not easy to find sources. Ms. Sandberg has been creative, persistent, efficient, and thorough in researching and writing about this topic. In a short period of time, she

has accomplished an amazing amount of excellent research and written several comprehensive research summaries.

In addition to her writing, research, and oral advocacy skills, Ms. Sandberg has a great attitude. She was receptive to advice during our individual class meetings and during our research meetings this summer. She asks excellent questions and welcomes any suggestions.

I would highly recommend Ms. Sandberg for a judicial clerkship. She will work hard and provide high quality research and excellent writing. If I can be of any further assistance in your review of her application, please feel free to contact me.

Very truly yours,

*Jane Bloom Grise*

Jane Bloom Grisé

Director of Academic Enhancement  
H. Wendell Cherry Associate Professor of Law  
University of Kentucky  
J. David Rosenberg College of Law  
620 S Limestone, Room 275  
Lexington, KY 40506  
859-218-0634  
jane.grise@uky.edu

June 23, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

As a seasoned trial criminal defense attorney and former law professor at the University of Kentucky College of Law, I am honored to recommend Claire Sandberg for your judicial clerkship.

Over the past year I have had the pleasure of instructing and mentoring Ms. Sandberg in both the academic and experiential learning settings at the University of Kentucky College of Law. Not only did Ms. Sandberg earn an A in my Criminal Trial Process class, but she was an exceptional legal extern in the Kentucky Innocence Project (KIP) externship, which required a year-long commitment. As one of only nine students selected for this highly competitive externship, it was Ms. Sandberg's curiosity and quiet confidence that differentiated her from other applicants.

Under my supervision in the KIP externship, Ms. Sandberg worked with two other externs on two complex innocence cases. I assigned her to these cases because of her demonstrated strong work ethic, her ability to focus on detail, and her thirst to research, investigate, and write. One case in particular required Ms. Sandberg to review over 30,000 pages of records, watch hours of the multiple-defendant, months-long jury trial, and succinctly review and analyze various topics related to the factual claims of innocence. To add more complexity, this case had been an on-going case. Before she could begin her own analysis and work, Ms. Sandberg tediously reviewed and analyzed previous attorney and extern work product in order to develop a plan to move the case forward. She and her partners were a cohesive team and went above and beyond for their clients. Her work product for these cases was exceptional – thorough, detailed, complete, well-researched, and thoughtful.

However, what differentiates Ms. Sandberg from the hundreds of law students I have worked with, is her quality of character; character that is not learned or acquired in law school, but one that is deeply rooted in who Ms. Sandberg is. The first time I met Ms. Sandberg, I knew immediately that she was someone special. She has persistence, tenacity, and zeal to seek the truth and advocate for her clients without the goal of recognition or accolade (although those are well-deserved). She is empathetic, kind, and honest and is continually striving to better herself as a legal advocate, a writer, a human being, and a life-long learner. It is all of these qualities coupled with academic excellence that make Ms. Claire Sandberg an ideal candidate for your judicial externship.

Please do not hesitate to contact if you should need additional information regarding Ms. Claire Sandberg.

Sincerely,

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Christine Madjar

Staff Attorney Supervisor, Education & Strategic Planning Branch

Kentucky Department of Public Advocacy, 5 Mill Creek Park, Frankfort, KY 40601

(440) 334-3240

Christine Madjar - christine.madjar@gmail.com - 440-334-3240

**Memorandum to:** Allison Hight

**From:** Claire Sandberg

**Re:** T visa Underage Marriage

**Date:** June 28, 2022

**Questions Presented**

- (1) Whether derivative T visa applications will be approved if the derivative applicant was underage at the time of marriage to the principal T visa applicant?
- (2) Whether there will be consequences on the principal T visa applicant for marrying an underage partner?

**Brief Answer**

It is unlikely that the age of the derivative T visa applicants in this case will impact the approval of either the derivative or principal T visa applications.

Marriage between girls under 18 years old and men under 21 years old is not legal in India; however, such a marriage is seen as legally valid if the marriage has already occurred and it has not been repudiated or nullified by the minor. Because legal validity at the country of marriage is an exception to the Kentucky law against underage marriage, as long as the marriages were made in good faith, the derivative T visa applications in the cases at hand are likely to be approved based on a spousal relationship. Furthermore, if the derivative T visa application is denied, it is unlikely that the denial will have an impact on the principal T visa application.

## Summary and Analysis

### **I. In certain situations, USCIS will approve derivative T visa applications based on a spousal relationship even though the marriage was conducted at a time when one or both parties were underage.**

Victims of trafficking and their family members may be eligible for a special kind of nonimmigrant status, called T nonimmigrant status (T visa).<sup>1</sup> In a T visa application, there may be “principal” applicants and “derivative” applicants.<sup>2</sup> Principal applicants are those who claim they were a victim of trafficking, while derivative applicants are qualifying family members of the principal applicant.<sup>3</sup> The family relationship must exist throughout the filing and adjudication of both T visa applications, as well as when the qualifying family member is admitted to the United States, if the member is residing abroad.<sup>4</sup> Regardless of age of the principal applicant, their spouse is considered a qualifying family member for a derivative application.<sup>5</sup> In immigration law, a couple is considered spouses if

- The marriage was made under good faith.
- The marriage was legally valid in the place it was performed and celebrated (“place of celebration”), which may be proven with a marriage certificate.<sup>6</sup>

It should be noted that, even if the marriage was valid at the place of celebration for immigration purposes, USCIS does not recognize marriages that “violate the strong public policy of the state

<sup>1</sup> Immigration and Nationality Act (INA) § 101(a)(15)(T), 8 U.S.C. § 1101(a)(15)(T) (2018).

<sup>2</sup> 8 C.F.R. § 214.11 (a) (2021).

<sup>3</sup> *Id.*

<sup>4</sup> 3 DEP’T OF HOMELAND SEC., USCIS POLICY MANUAL pt. B, ch. 4, [www.uscis.gov/policy-manual/volume-3-part-b-chapter-4](http://www.uscis.gov/policy-manual/volume-3-part-b-chapter-4).

<sup>5</sup> INA § 101(a)(15)(T)(ii), 8 U.S.C. § 1101(a)(15)(T).

<sup>6</sup> DEP’T OF HOMELAND SEC., USCIS FORM I-914 INSTRUCTIONS 9 (Dec. 2, 2021), <https://www.uscis.gov/sites/default/files/document/forms/i-914instr.pdf>.

of residence of the couple.”<sup>7</sup> However, this exception has typically been limited to situations where the “the marriage violates the criminal law of the state of residence,” such as an incestuous marriage.<sup>8</sup>

In the cases at hand, one marriage was between a 16 year old and 10 year old at the time of marriage, and the other marriage was between a 21 years old and 12 years old at the time of marriage. Both marriages were performed and celebrated in India, and both couples wish to reside in Kentucky. The husbands currently live in Kentucky and the wives wish to join their respective husbands. Assuming the marriages were made under good faith, the primary issue at hand is whether the marriages adhere to the laws of India and Kentucky.

The main law governing child marriage in India is the Prohibition of Child Marriage Act, 2006 (PCMA).<sup>9</sup> The minimum age of marriage under the PCMA is 18 years for women and 21 years for men.<sup>10</sup> An adult man may be punished by up to two years of imprisonment and/or fines for marrying a child.<sup>11</sup> However, once an underage marriage has taken place, it is seen as a lawfully-valid marriage unless the underage party nullifies the marriage before turning 23 if the child is a boy and 20 if the child is a girl.<sup>12</sup> Annulment may be accomplished by filing a petition for a decree of nullity in district court, which will be granted only after both parties have been given notices to appear before the district court and plead their case.<sup>13</sup> Additionally, if the minor

<sup>7</sup> 12 USCIS POLICY MANUAL, *supra* note 4, at pt. G, ch. 2.

<sup>8</sup> *Id.* n.4.

<sup>9</sup> The Prohibition of Child Marriage Act, 2006, § 1(2) (India), <https://legislative.gov.in/sites/default/files/A2007-06.pdf>.

<sup>10</sup> *Id.* § 2(a).

<sup>11</sup> *Id.* § 9.

<sup>12</sup> *Id.* § 3; *see also* MADHU MEHRA, SAUMYA MAHESHWARI, CHILD MARRIAGE PROSECUTIONS IN INDIA (2021), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3903447](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3903447).

<sup>13</sup> The Prohibition of Child Marriage Act § 3(1).

was forced, enticed, or compelled into the marriage, the marriage is void because the child is considered trafficked.<sup>14</sup>

In Kentucky, a marriage in which one or both parties are under age 18 at the time of marriage is prohibited and void.<sup>15</sup> However, this prohibition does not apply to “a lawful marriage in another state or country prior to the parties’ residence in the Commonwealth of Kentucky.”<sup>16</sup> This is essentially a “place of celebration” exception.

In our case, at least one party in both marriages was under the legal age to be married in India, so both couples broke Indian law at the time of marriage. But, since Indian law has an exception to their enforcement of marriage age requirements, as long as the underage parties do not nullify the marriage, our clients have a legally valid marriage in India. There is no indication that any party wishes to repudiate or nullify their marriage. Further, there is no indication that either marriage was made in bad faith. Still, it will be important to provide information, such as marriage certificates, to show that these are bona fide marriages.

Since the facts given do not indicate any circumstances that would otherwise invalidate the marriage, it is likely seen as a legally-valid marriage in India. As a result, we must consider the marriage’s validity in the state where the couple wishes to reside. Here, the “place of celebration” exception to the Kentucky law against underage marriage will likely apply since the couples were married in India and, as discussed above, have a legally valid marriage in India. Thus, all elements are satisfied to support a finding that both couples meet the definition of “spouses” in immigration law. As a spouse is a qualifying family member for a derivative T visa

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<sup>14</sup> *Id.* § 12.

<sup>15</sup> KY. REV. STAT. § 402.020(1)(f).

<sup>16</sup> *Id.* § 402.020(2).

application, USCIS will likely approve these T visa derivative applications even though the applicant was underage at the time of marriage.

**II. It is unlikely that there will be immigration consequences for the principal T visa applicant who married an underage partner.**

In our case, it is unlikely that there will be negative immigration consequences for the principal T visa applicant who married an underage partner. Even if the derivative applications are denied, it is likely that this will not impact the principal T visa application.

If the elements required for a T visa are otherwise met, the principal applicant's request may be denied if he also trafficked people or if the Secretary of Homeland Security determines that the principal applicant is unable to cooperate in the trafficking investigation.<sup>17</sup> Additionally, the T visa may be revoked if

- There was USCIS error in the approval, preparation, procedure, or adjudication of the application that affects the outcome;
- In the case of a T-2 spouse [derivative applicant], a final divorce from the T-1 principal;
- The T-1 nonimmigrant has refused to comply with reasonable requests to assist with the investigation or prosecution of the trafficking in persons;
- The law enforcement agency (LEA) withdraws or disavows its endorsement.<sup>18</sup>

Notably, neither scenario applies to a principal T visa applicant whose partner was underage at the time they were married. Further, it seems that the only type of T visa applicant that is impacted by a derivative T visa's denial or revocation would be the *derivative* T visa's child.<sup>19</sup>

<sup>17</sup> Immigration and Nationality Act § 101(a)(15)(T)(iii), 8 U.S.C. § 1101(a)(15)(T) (2018).

<sup>18</sup> 3 USCIS POLICY MANUAL, *supra* note 4, at pt. B, ch. 13.

<sup>19</sup> *Id.*

The principal applicant does not seem to be reliant or impacted by the revocation or denial of any other applicant. The same cannot be said of derivative T visa applications, because they rely on the principal applicant's acceptance.<sup>20</sup>

While the issue of underage marriage of T visa applicants have little-to-no guidance in the law, the causes for denial or revocation that *are* listed do not apply to underage marriages. Since it has been established that our clients have a legally valid marriage, there is no indication that their marriage is criminal or applicable to any other cause for denial or revocation. As such, if the derivative application is denied, it will likely be due to an issue unrelated to the age the couple was when they were married. Thus, unless the husband is involved in other activities that fall under the reasons for denial, it is unlikely that the denial of the derivative T visa applicant will cause issues for the principal T visa applicant.

### Conclusion

It is unlikely that the age of the derivative T visa applicants at the time of marriage will impact the approval of either the derivative or principal T visa applications in this case. When the good faith marriage is considered legally valid in the country where it was performed and celebrated (and does not violate a criminal law where the couple wishes to reside), USCIS will likely approve derivative T visa applications based on a spousal relationship even though the marriage was conducted at a time when one or both parties were underage. Both the derivative and principal applicants should continue applying for their T visas.

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<sup>20</sup> 8 C.F.R. § 214.11(m)(4) (2021) ("Revocation of a principal alien's application for T-1 nonimmigrant status will result in . . . the automatic termination of the derivative T nonimmigrant status for all derivatives.").

**Applicant Details**

First Name **Shane**  
 Last Name **Sanderson**  
 Citizenship Status **U. S. Citizen**  
 Email Address [ss4436@georgetown.edu](mailto:ss4436@georgetown.edu)

Address

Address
Street
<b>329 Elm St NW</b>
City
<b>Washington</b>
State/Territory
<b>District of Columbia</b>
Zip
<b>20001</b>

Contact Phone Number **5733552979**

**Applicant Education**

BA/BS From **University of Missouri**  
 Date of BA/BS **May 2017**  
 JD/LLB From **Georgetown University Law Center**  
[https://www.nalplawschools.org/employer\\_profile?FormID=961](https://www.nalplawschools.org/employer_profile?FormID=961)  
 Date of JD/LLB **June 7, 2023**  
 Class Rank **School does not rank**  
 Law Review/Journal **Yes**  
 Journal(s) **Georgetown Journal of Legal Ethics**  
 Moot Court **No**  
 Experience

**Bar Admission****Prior Judicial Experience**

Judicial Internships/  
 Externships **No**

Post-graduate Judicial Law Clerk      **No**

**Specialized Work Experience**

**Recommenders**

Hopwood, Shon  
srh90@georgetown.edu  
Vázquez, Carlos  
vazquez@georgetown.edu  
Axam, Tony  
tony\_axam@fd.org  
Pardo, Michael  
michael.pardo@georgetown.edu

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

Shane Sanderson

329 Elm St. NW  
Washington, DC 20001

March 24, 2023

The Honorable Jamar K. Walker  
Walter E. Hoffman United States Courthouse  
600 Granby St.  
Norfolk, VA 23510

Dear Judge Walker,

I am a third-year law student at Georgetown University Law Center. I am writing to apply for a judicial clerkship in your chambers for 2024 and all other terms. I have a strong interest in the criminal law. I graduated from community college in the Tidewater region. My brother is stationed in Portsmouth. I would be honored to serve as your clerk.

As a reporter for the Casper (Wyoming) Star-Tribune, I followed criminal and civil matters, including more than a dozen trials. Exposure to litigation practice led me to law school. I have since developed my professional interests and competencies during two semesters as an intern with the Federal Public Defender for the District of Columbia and during my summer with Dechert LLP.

Nearly all the legal research and writing I have performed has pertained to active litigation in federal courts. While a journalist, I developed comfort writing on deadline, working under time pressure, and managing disparate tasks in creating public-facing work. My high standards and attention to detail will enable me to contribute to the work of your chambers.

I have included a resume, a writing sample, a law school transcript, and recommendations from Assistant Federal Public Defender Tony Axam, Professor Shon Hopwood, Professor Michael Pardo, and Professor Carlos Vázquez. Thank you for your time and consideration. If I can supply any further information in support of my candidacy, please do not hesitate to contact me at 573.355.2979 or ss4436@georgetown.edu.

Best regards,



Shane Sanderson

**SHANE SANDERSON**

329 Elm St. NW, Washington, DC 20001 • (573) 355-2979 • ss4436@georgetown.edu

**EDUCATION****GEORGETOWN UNIVERSITY LAW CENTER****Washington, DC***Juris Doctor*

Expected June 2023

GPA: 3.69/4.00

Activities: *Georgetown Journal of Legal Ethics*, Executive & Submissions Editor; Christian Legal Aid of DC, volunteer.

Honors: Dean's list (both semesters 1L); Pro Bono Pledge honoree (expected on conferral of degree); Merit scholarship.

Publication: Shane Sanderson, Note, *Drawing a Portrait of Confidence: One Resolution to Legitimate Voter Concerns in the Shadow of Illegitimate Violence*, 35 GEO. J. LEGAL ETHICS 1117 (2022).**UNIVERSITY OF MISSOURI****Columbia, MO***Bachelor of Journalism; Emphasis in Data Journalism for Print and Digital News*

May 2017

Honors: Sam Bronstein Scholarship; Jeanne &amp; David Rees Scholarship; Raymond J. Ross Scholarship

**COLLEGE OF THE ALBEMARLE****Manteo, NC***Associate in Arts*

December 2014

**EXPERIENCE****DECHERT****Philadelphia, PA***Incoming Litigation Associate*

Expected November 2023

*Summer Associate*

May 2022 – July 2022

- In federal trial of pro bono matter, *inter alia*: summarized potential cross-examination faced by client on the basis of his first-day testimony and proposed modes of rehabilitation; researched case law for potential *Batson* challenge; drafted portions of motion *in limine*; and drafted and delivered opposing counsel moot opening statement and closing argument.
- Wrote internal memoranda for circulation to litigation team on product liability matter set for trial in August. Redrafted memoranda for presentation to client advising trial strategy following opposing counsel's release of relevant discovery.
- Drafted questions used in deposition of adverse expert witness expected to testify regarding remedies.

**FEDERAL PUBLIC DEFENDER****Washington, DC***Appellate Intern*

Sept. 2021 – April 2022

- Wrote first draft of successful motion for relief in District Court on Sixth Amendment grounds resulting in the court's identification of error in jury selection process and corresponding modification of procedures for the District.
- Drafted pre-trial motions, portions of sentencing memorandum, and portions of habeas corpus petitions to District Court, as well as portions of certiorari petition filed with U.S. Supreme Court.
- Investigated novel questions of law and drafted summaries of relevant persuasive authorities for reference in client consultation and drafting of appellate briefs, habeas corpus petitions, and probation revocation arguments.
- Conducted preliminary statistical analysis of jury panel demographics to prepare litigation of Sixth Amendment issue.

**CALIFORNIA APPELLATE PROJECT****San Francisco, CA***Habeas Intern*

June 2021 – Aug. 2021

- Reviewed trial record, client communications, newly developed evidence, relevant scientific literature, and appellate attorney documentation to identify potential issues for state habeas corpus petition in death penalty case.

**CASPER STAR-TRIBUNE****Casper, WY***Criminal Justice Reporter*

Aug. 2017 – July 2020

- Researched and reported articles totaling more than 5,000 words, drawing on thousands of pages of court and administrative documents and hours of in-person interviews.
- Independently pitched and implemented a redesign of the paper's criminal justice coverage, reorienting the section toward in-depth narrative, investigative and accountability journalism.
- Honored with the Wyoming Press Association's first place award in general news and the Associated Press Sports Editors' national investigative prize, ranking alongside contestants from ESPN.com, USA Today and Yahoo Sports.

**KANSAS CITY STAR****Kansas City, MO***News Reporting Intern*

June 2017 – Aug. 2017

**COLUMBIA MISSOURIAN****Columbia, MO***Assistant City Editor*

Dec. 2016 – May 2017

*Public Safety Reporter*

Jan. 2016 – Dec. 2016

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Record of: Shane Sanderson  
GUID: 817740569

Course Level: Juris Doctor

Entering Program:

Georgetown University Law Center  
Juris Doctor  
Major: Law

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2020							
LAWJ	001	22	Civil Procedure	4.00	A	16.00	
			Aderson Francois				
LAWJ	002	22	Contracts	4.00	A-	14.68	
			Anna Gelpen				
LAWJ	005	21	Legal Practice: Writing and Analysis	2.00	IP	0.00	
			Erin Carroll				
LAWJ	008	21	Torts	4.00	B+	13.32	
			Paul Rothstein				
Spring 2021							
LAWJ	003	22	Criminal Justice	4.00	A	16.00	
			Shon Hopwood				
LAWJ	004	22	Constitutional Law I: The Federal System	3.00	B+	9.99	
			Paul Smith				
LAWJ	005	21	Legal Practice: Writing and Analysis	4.00	B+	13.32	
			Erin Carroll				
LAWJ	007	92	Property	4.00	A-	14.68	
			Neel Sukhatme				
LAWJ	1326	50	Legislation and Regulation	3.00	A-	11.01	
			William Buzbee				
Dean's List 2020-2021							
Fall 2021							
LAWJ	126	07	Criminal Law	3.00	B+	9.99	
			John Hasnas				
LAWJ	1491	113	~Seminar	1.00	A-	3.67	
			Adrianne Clarke				
LAWJ	1491	115	~Fieldwork 3cr	3.00	P	0.00	
			Adrianne Clarke				
LAWJ	1491	20	Externship I Seminar (J.D. Externship Program)		NG		
			Adrianne Clarke				
LAWJ	165	09	Evidence	4.00	B+	13.32	
			Mushtaq Gunja				
LAWJ	1656	08	Technology and Election Integrity Seminar	2.00	A	8.00	
			Matt Blaze				
Transcript Totals							
				EHrs	QHrs	QPts	GPA
Current				13.00	10.00	34.98	3.50
Cumulative				43.00	40.00	143.98	3.60

-----Continued on Next Column-----

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2022							
LAWJ	1098	05	Complex Litigation	4.00	B+	13.32	
			Maria Glover				
LAWJ	1492	110	~Seminar	1.00	A-	3.67	
			Alexander White				
LAWJ	1492	112	~Fieldwork 3cr	3.00	P	0.00	
			Alexander White				
LAWJ	1492	39	Externship II Seminar (J.D. Externship Program)		NG		
			Alexander White				
LAWJ	1712	05	Advanced Evidence Seminar	3.00	A	12.00	
			Michael Pardo				
LAWJ	215	09	Constitutional Law II: Individual Rights and Liberties	4.00	A-	14.68	
			Robin Lenhardt				
Fall 2022							
LAWJ	1655	05	Criminal Justice Reform Seminar	3.00	A	12.00	
			Shon Hopwood				
LAWJ	178	05	Federal Courts and the Federal System	4.00	A	16.00	
			Carlos Vazquez				
LAWJ	351	05	Trial Practice	2.00	A-	7.34	
			Murad Hussain				
LAWJ	361	03	Professional Responsibility	2.00	A-	7.34	
			Stuart Teicher				
LAWJ	394	05	Jury Trials in America: Understanding and Practicing Before a Pure Form Democracy	2.00	A	8.00	
			Gregory Mize				
Spring 2023							
LAWJ	1713	05	Law & Neuroscience Seminar	2.00	A-	7.34	
LAWJ	1752	05	Introduction to Alternative Dispute Resolution	3.00	A-	11.01	
LAWJ	1780	08	Criminal Procedure and the Roberts Court Seminar	2.00	A	8.00	
LAWJ	268	05	Remedies in Business Litigation	3.00	A	12.00	
LAWJ	455	01	Federal White Collar Crime	4.00	A-	14.68	
Transcript Totals							
				EHrs	QHrs	QPts	GPA
Current				14.00	14.00	53.03	3.79
Annual				27.00	27.00	103.71	3.84
Cumulative				85.00	79.00	291.36	3.69

-----End of Juris Doctor Record-----

**Georgetown Law**  
600 New Jersey Avenue, NW  
Washington, DC 20001

March 24, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing this letter with enthusiastic support for Shane Sanderson's application for a clerkship in your chambers. I have come to know Shane through teaching him in my Criminal Justice course, my Criminal Justice Reform seminar at Georgetown University Law Center, and in our office-hours discussions.

Shane was among the strongest of my first-year Criminal Justice students in spring 2021 (our criminal justice class is essentially a criminal procedure class involving the Fourth, Fifth, and Sixth Amendments). Shane has a strong work ethic, bright intellect, and dedication to the cause of justice that will serve our legal system well in the years to come.

As a student, Shane was consistently fully prepared for my lectures. His cold-call responses consistently indicated a willingness to grapple with the material, the significance of its application, and the policy implications arising from the readings. His moral compass clearly informed our classroom discussion, and he showed an ability to advocate tenaciously on that basis while remaining thoughtful and respectful of his classmates and the teaching environment. I was deeply impressed by his ability to neatly arrange facts and distinguish doctrine in response to my classroom hypotheticals. I was therefore entirely unsurprised that Shane wrote one of the strongest papers I graded that spring.

This past fall, Shane attended my Criminal Justice Reform seminar, where he was asked to prepare a piece of legal scholarship. He was always thorough and engaging in class. In one class, former U.S. District Court Judge Mark Bennett was a guest lecturer, and Shane asked whether reversals from the circuit court ever went into his decisions on the bench, and Judge Bennett responded by saying, "that was the best question I have ever been asked," and then he proceeded to answer Shane's question in detail for the next ten minutes.

Shane's character in the classroom is due in no small part to his background. For years following high school, he worked in food service, coffeeshops and restaurant kitchens. When he returned to school, he studied journalism and covered criminal justice at a daily newspaper in Wyoming. His willingness to work hard and his attitude of service should be partially attributable to his prior experience.

It is in journalism that Shane developed the deep interest in the law that he demonstrated in my class. He also began developing an understanding of the real-world implications of legal work. While working in news he published multiple articles detailing instances of police use of force and investigative techniques after which agencies terminated employment of the officers involved. I think this background will equip him to help you in navigating the difficult and weighty questions posed to members of the judiciary.

Finally, Shane prepared an excellent paper this fall in which he argued that people with felony convictions should be allowed to sit on civil and criminal matters that arise from the prison setting. I think he is the first to write on this novel idea, and his paper was able to break complex ideas in easy-to-read paragraphs. Again, I think his journalism pedigree would be an asset to your chambers.

Shane is also a delight to be around. I am confident that you and your chamber would enjoy working with him and that he will be an excellent clerk. If you have any further questions that I can answer about Shane, please do not hesitate to ask.

Sincerely,

Shon Hopwood

Shon Hopwood - [srh90@georgetown.edu](mailto:srh90@georgetown.edu)

**Georgetown Law**  
600 New Jersey Avenue, NW  
Washington, DC 20001

March 24, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing in support of Shane Sanderson's application to be your law clerk. Shane was a student in my Federal Courts and the Federal System class in fall of 2022. This is a notoriously difficult course, and it is generally taken by the top students at Georgetown, including all of those who plan to apply for a judicial clerkship. Even in this company, Shane was a standout student. I generally assign a panel of students to be "on call" for each class. Shane always gave on point and insightful answers when I called on him. But, more importantly, he went above and beyond, making valuable contributions to class discussions even when he was not on call. It was clear from his class participation that he had mastered the difficult, often abstruse doctrines in this field. He also often stayed after class to continue discussing the Federal Courts issues we had covered in class. These conversations, as well as conversations during my office hours, showed that, in addition to being very bright and well-spoken, Shane is intellectually curious and sincerely interested in the issues on which he would be working as your clerk.

In light of his class performance, I was not surprised, after grading the exams blindly, to find that he had written one of the top-scoring exams. The exam I gave that year was, in retrospect, an extremely difficult one. Most students missed a lot of the main issues. Shane's exam was exceptional in that he caught all of the major issues and examined them succinctly and insightfully. The exam was well-written, well-organized, and well analyzed, and it confirmed his mastery of the subject matter of the course. I gave him a well-deserved A in the course.

During our conversations after class and during office hours, I also found him to be a delightful person. I am confident he would get along well with you and with his peers. He had a pre-law school career in journalism covering legal matters, which prepared him well for law school. Shane also conveys a higher degree of maturity than the average law student.

In sum, I recommend Shane to you enthusiastically. I have no doubt that he would make an excellent law clerk.

Please do not hesitate to contact me if you would like to discuss Shane's qualifications further.

Sincerely yours,

Carlos M. Vazquez

Carlos Vzquez - vazquez@georgetown.edu

**FEDERAL PUBLIC DEFENDER  
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May 5, 2022

Dear Judge,

I am writing to provide my highest recommendation for Shane Sanderson who worked in my office as a legal intern over the past school year. He is intelligent, hardworking, and deeply motivated by the promise of justice. I have no doubt that he will make an excellent law clerk, and eventually, an outstanding attorney.

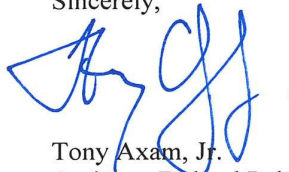
Shane came to the Office of the Federal Public Defender in the early fall of 2021 and immediately became a sought-after intern amongst the attorneys. His work with me involved research for cases on appeal in the D.C. Circuit. Obviously, his time as a reporter served him well as he was able to return assignments to me quickly with appropriate brevity and depth of analysis. He was the rare law student capable of understanding the broader implications of legal issues while successfully articulating their importance in the case immediately before the court.

I appreciated that Shane listened carefully and had the ability to understand the procedural and substantive doctrines that guide our work. He was able to accurately describe circuit splits for certiorari petitions and assist with evaluating issues of attorney ineffectiveness in post-conviction proceedings. When providing him assignments, I sometimes thought they were beyond the reach of a second-year law student. He repeatedly proved me wrong.

This spring, Shane assisted me with novel a Sixth Amendment jury cross-section challenge. Thanks in no small part to his extensive record review and legal research, our office inspired modifications to the District Court's jury selection plan. I like to think this effort will help ensure greater realization of our clients' rights to juries made up of fair cross-sections of the community.

I am pleased that I had the chance to supervise Shane and to get to know him personally. I look forward to watching him develop as a lawyer. Please contact me directly if you would like to further discuss my impressions of him.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Tony Axam, Jr.', with a stylized flourish at the end.

Tony Axam, Jr.  
Assistant Federal Public Defender

**Georgetown Law**  
600 New Jersey Avenue, NW  
Washington, DC 20001

March 24, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to recommend Shane Sanderson, a current 3L student at Georgetown University Law Center, for a clerkship position in your chambers. My recommendation and my knowledge of Mr. Sanderson's legal skills are based on the following: his impressive performance in my Advanced Evidence Seminar (in Spring 2022); a law review article that he is drafting; and his impressive performance thus far in my Law & Neuroscience seminar this semester (Spring 2023).

Mr. Sanderson was student in my Advanced Evidence Seminar during the last academic year. The seminar of 21 students focused on complex issues involving the law of evidence, with a particular focus on criminal cases. The work for the course consisted of two components: (1) class discussion of assigned topics and readings, and (2) an independent research paper. Mr. Sanderson excelled at both aspects and received a grade of "A" for the course. On the first component (class discussion and participation), the topics included advanced issues concerning admissibility rules (such as character, experts, and privileges) as well as several constitutional issues and issues involving burdens of proof and presumptions. Mr. Sanderson made many positive contributions to our class discussions, engaging regularly with me and his classmates on the issues. His contributions displayed a sophisticated and nuanced understanding of evidence doctrine as well as an appreciation of the larger legal context, including practical and policy considerations. He also regularly connected the evidentiary issues being discussed to other legal issues involving, for example, criminal justice and criminal procedure.

Mr. Sanderson's research paper was also equally impressive. The paper argues for an increased role for juries at criminal sentencing by connecting the sentencing issue to legal doctrine and scholarship on the distinction between "questions of law" and "questions of fact." The paper, in my opinion, creatively and effectively brings together three complex issues: (1) the abstract and theoretical academic scholarship on the law-fact distinction; (2) the Apprendi line of Supreme Court jurisprudence on sentencing; and (3) practical issues related to sentencing. The paper argues that, under existing academic models for distinguishing legal from factual questions, the question of an appropriate criminal sentence appears to fall on the "fact" (as opposed to the "law") side of the line, thus suggesting an increased role for juries as with other "factual" questions. In addition to its substance, the paper overall displayed several admirable qualities. These include the depth and quality of the research (both caselaw and scholarship), the clarity of the analysis and overall presentation, as well as a nuanced discussion of counterarguments and limitations of the paper's analysis.

After the class, Mr. Sanderson decided to expand his seminar paper into a full-length law review article. After conducting significant additional research, and seeking additional feedback on his drafts, Mr. Sanderson expanded the initial draft into a 25,000 word manuscript that he is now in the process of submitting to law reviews for publication. As with his original paper, I was impressed with the depth and breadth of his additional research, and with his ability to bring together a number of distinct issues in arguing for an increased role for juries in criminal sentencing.

This semester, Mr. Sanderson is a student in my Law & Neuroscience Seminar. The seminar explores a number of cutting-edge issues involving the use of neuroscience in legal settings, including, for example, death-penalty and juveniles cases on the criminal side and proving injury and pain on the civil side. The class discussions also involve several complex evidentiary issues involving different types of expert testimony. As in the Advanced Evidence Seminar, Mr. Sanderson has made many positive contributions to the class thus far. He also continues to display an impressive understanding of the complex evidentiary issues and an appreciation of the important practical and policy considerations underlying evidence doctrine.

Based on his performances in my courses, I believe that Mr. Sanderson would be an excellent law clerk. I would be happy to discuss his application further. The best way to reach me is via email at [michael.pardo@georgetown.edu](mailto:michael.pardo@georgetown.edu).

Sincerely,

Michael S. Pardo  
Professor of Law  
Georgetown University Law Center

Michael Pardo - [michael.pardo@georgetown.edu](mailto:michael.pardo@georgetown.edu)

**SHANE SANDERSON**

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**WRITING SAMPLE**

The attached writing sample is the paper that I submitted in Spring 2023 for Criminal Procedure and the Roberts Court, a seminar taught by Prof. Irv Gornstein and Judge Pamela Harris. Prior to drafting the paper, I discussed my theory of the case with Prof. Gornstein during an approximately 20-minute conversation. All other work on this writing sample was my own.

Shane Sanderson

**BENCH MEMORANDUM**

ADAM SAMIA V. UNITED STATES OF AMERICA, NO. 22-196

**INTRODUCTION**

The issue for the Court to determine is whether admission of a codefendant's redacted out-of-court confession that is nonetheless immediately inculpatory due to the surrounding context and not subject to cross examination violates the defendant's rights under the Confrontation Clause of the Sixth Amendment.

The district court determined that the confession as redacted was facially non-inculpatory and thus not violative of the Confrontation Clause. The district court's determination and the circuit court's affirmation, however, too narrowly read the Court's precedent construing the Confrontation Clause. Because its caselaw requires courts to look to non-evidentiary information available to the jury and outside the four corners of the statement, the Court should reverse the defendant's conviction and remand for a new trial with application of the appropriate rule.

**KEY FACTS**

Petitioner is Adam Samia, who in early 2012 traveled to the Philippines to work as a contract killer for a multinational criminal enterprise. Resp't's Br. 3. Months later, authorities in the Philippines found Catherine Lee, a local real-estate agent, dead from close-range gunshot wounds. *Id.* Law enforcement later arrested confessing codefendant Carl David Stillwell and petitioner, among others, in connection with her death. *Id.* Mr. Stillwell waived his *Miranda* rights following his arrest. *Id.* He confessed to involvement in Ms. Lee's murder and identified petitioner as the shooter. Pet'r's Br. 8.

A federal grand jury indicted petitioner, Mr. Stillwell, and another codefendant of: conspiracy to commit murder for hire; murder for hire; conspiracy to kidnap and murder in a

foreign country; and using or carrying a firearm during and in relation to murder. Resp't's Br. 4.

The indictment also charged petitioner and Mr. Stillwell of conspiracy to money laundering. *Id.*

On a government pretrial motion *in limine*, the trial court ruled admissible only against Stillwell a redacted version of the confession. *Id.* At the joint trial, the confession came in through the DEA agent who had interviewed Mr. Stillwell. *Id.*, 6. Because Mr. Stillwell was accused of conspiracy, the statement included reference to a co-conspirator. *Id.* It was modified, though, consistent with the trial court's order, to remove the petitioner's name. *Id.* The agent testified:

Q. During your interview, did you ever ask Mr. Stillwell whether he had ever been out of the country?

A. Yes.

Q. What did he say?

A. He said he had been overseas once.

Q. Did he indicate where he had gone?

A. The Philippines.

...

Q. Did Mr. Stillwell indicate whether he had gone alone or with someone else?

A. He stated that he had met somebody else over there.

Q. Did he describe where he and the person that he met over there stayed while in the Philippines?

A. Yes, he explained that he and the other person initially stayed at a hotel, but then moved to what he described as a condo or apartment-type complex in the old capital area of the city.

Q: And he stated that they lived together?

A: Yes.

Q: Stayed in the same place?

A: Yes.

Q: To his knowledge, did the person that he was with in the Philippines ever carry a firearm?

A: Yes.

Q: Did he describe what kind of firearm it was?

A: He described it as a full-size, four-inch gun of some nature, but could not recall whether it was a nine millimeter, .22, or .45 caliber.

Q: Did he notice any other features of the firearm?

A: Yeah, he recalled that it had a threaded barrel.

...

Q. Was there a particular occasion that he remembered that individual having that gun in their possession?

A. Yes.

Q. When was that?

A. He described a time when he and that other individual had traveled outside of Manila to view a property and that he had observed a gun then.

Q. And at any point during the interview did you ask him about the murder of Catherine Lee?

A. Yes.

...

Q. What did he say about it?

A. He stated, "I did not kill anybody gentlemen but I was there and things I may have done led to that."

Q. Did he say where she was when she was killed?

A. Yes. He described a time when the other person he was with pulled the trigger on that woman in a van that he and Mr. Stillwell was driving.

J.A. 74–77. *See also*, Resp't's Br. 6–8, Pet'r's Br. 9–11.

During the DEA agent's testimony, the district court instructed the jury that the confession was admissible only as to Mr. Stillwell and not against petitioner and the third codefendant. Resp't's Br. 8. The court again instructed the jury before deliberations. *Id.*

Petitioner testified and denied involvement with the murder. *Id.*, 12. His codefendants both exercised their Fifth Amendment right and did not testify at trial. *Id.* The jury convicted all three defendants on all counts. *Id.* The court sentenced petitioner to life imprisonment. *Id.*

Before the U.S. Court of Appeals for the Second Circuit, petitioner argued that the evidentiary context of the confession would cause jurors to immediately infer that petitioner was the "another person" referred to in the confession. Pet'r's Br. 13. The circuit court looked to its precedent which required considering the statement "separate and apart from any other evidence admitted at trial." *Id.* (quoting court of appeals opinion). The Second Circuit denied the Confrontation Clause claim and affirmed petitioner's conviction. Resp't's Br. 12.

This Court on December 13, 2022, granted the petition for a writ of certiorari in this matter. *Id.*, 1. The parties completed briefing of the case on March 17, 2023. See Pet'r's Reply

Br. 1. The Court on March 29 held oral argument and the parties submitted the case. The matter is now awaiting the Court's determination.

#### **LEGAL ANALYSIS**

The Court should hold that admission of Mr. Stillwell's confession in a joint trial of Mr. Stillwell and petitioner violated petitioner's Confrontation Clause right under the Sixth Amendment. Precedent of this Court makes clear that a confession is facially incriminating and thus inadmissible in a joint trial where there is a high risk that the jury will make an immediate inference that the defendant is accused by the statement independent of evidence introduced at trial. This rule holds regardless of whether the statement has been redacted and even if a limiting instruction has been issued to the jury.

In determining whether this rule has been violated, the trial court should look to the same non-evidentiary sources of information that would be available to jurors presented with the confession at issue. Trial courts should thus consider the four corners of the confession itself; information that would typically appear in a case caption or indictment, such as a person's name, their nickname, or the number of people involved in the crime; and information that would be otherwise apparent to jurors independent of the evidentiary presentation at trial, such as the physical appearance of the defendant in the courtroom.

Because the district court below considered only the first of these three sources of information, its analysis was incomplete. The record before the Court indicates that information available to jurors in the courtroom would be sufficient for the jury to make the immediate inference that the petitioner was the "[o]ther person" referenced in the confession. Because Mr. Stillwell declined to testify, petitioner did not have opportunity to cross-examine his accuser. The particularly dangerous nature of such an accusation could not be cured by a mere jury

instruction. For those reasons, the Court should determine that petitioner is entitled to a new trial in which his Confrontation Clause right is not violated.

This memorandum will begin by reviewing the relevant precedent cases and the categorical nature of their reasoning. It will go on to illustrate how those cases establish the rule set out above and demonstrate how the parties' proposed rules diverge from that precedent. It will continue by unpacking the practical policy considerations motivating the precedent cases and demonstrating how the parties' proposed rules fail to honor those interests. It then will distinguish the circumstances of this case from those in another area of constitutional jurisprudence that does allow for admission of party confessions with a limiting instruction. Finally, it will apply the rule established to the facts of the present case to determine that the Court should vacate the petitioner's conviction.

**I. The precedent cases create a general rule pertaining to risk of jury disregard of a limiting instruction regarding an inculpatory co-defendant confession.**

The Sixth Amendment states that “[i]n all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him[.]” U.S. Const. amend. VI. The Confrontation Clause will generally guarantee a criminal defendant the opportunity to cross-examine a witness providing testimony against him. *See Crawford v. Washington*, 541 U.S. 36, 68 (2004). Observance of this right can be a procedural challenge when the witness is unavailable.

Where (as here), a person has provided a confession and the government proceeds to joint trial against him and at least one other person, a Confrontation Clause issue may arise. The confessing co-defendant may claim his Fifth Amendment right against compelled self-incrimination and thus render himself unavailable. The non-confessing defendant will be unable to cross examine him. Were the confession to contain *testimony against* the non-confessing

defendant, introduction of the confession would implicate the Confrontation Clause right of the non-confessing defendant. At one point, the Court did allow for jury instructions to cure the issue. That has changed.

The Court's modern jurisprudence on this issue begins with *Bruton v. United States*, 391 U.S. 123 (1968). At trial, the government introduced a pre-trial confession made by co-defendant Evans to a postal inspector. *Id.*, 124. Mr. Evans, during the course of the confession, named Mr. Bruton as his accomplice in an armed robbery. *Id.* Mr. Evans declined to testify, and the law enforcement agent read the confession—containing Mr. Bruton's name—into the record. *Id.* The trial court instructed jurors to disregard the confession as to Mr. Bruton. *Id.*, 125, n.2. The jury convicted Mr. Bruton. *Id.*, 124–25. The Court held that the jury instruction did not suffice to prevent a violation of the Confrontation Clause. *Id.*, 126.

The Court wrote: “[B]ecause of the substantial risk that the jury, despite instructions to the contrary, looked to the incriminating extrajudicial statements in determining petitioner's guilt, admission of [the co-defendant's] confession in this joint trial violated petitioner's right of cross-examination secured by the Confrontation Clause of the Sixth Amendment.” *Id.*

The Court has twice since interpreted *Bruton*'s central holding. In *Richardson v. Marsh*, 481 U.S. 200 (1987), the Court considered a co-defendant confession that did not name the petitioning defendant. There, co-defendant Williams admitted to an assault and murder stemming from a robbery. *Id.*, 203–04. In the course of the confession Mr. Williams implicated Ms. Marsh. *Id.* Seeking to satisfy *Bruton*, the government redacted the confession to omit reference to Ms. Marsh. *Id.*, 203. The confession as admitted into evidence included description of a conversation in a car during which Mr. Williams and a third person, Mr. Martin, plotted the robbery on their way to the crime scene. *Id.*, 203 n.1. Because Mr. Martin died before trial, his name was not

redacted from the confession. Mr. Williams did not testify at trial. *Id.*, 204. Ms. Marsh, however, took the stand. *Id.* She stated that she was in the car on the way to the crime scene, but that she did not hear the robbery plan because the car's radio drowned out the conversation. *Id.*

The Court held that the *Bruton* rule had not been violated. *Id.*, 207. The Court held: “while it may not always be simple for the members of a jury to obey the instruction that they disregard an incriminating inference, there does not exist the overwhelming probability of their inability to do so that is the foundation of *Bruton*’s exception to the general rule [that jurors are presumed to follow instructions].” *Id.*, 208.

In the final of the trio, *Gray v. Maryland*, 523 U.S. 185 (1998), the confession read into evidence was likewise redacted. The government put the confession into evidence through a Baltimore City Police Officer. *Id.*, 188. When the detective read the confession at trial, he said the word “deleted” or “deletion” in place of the petitioner’s name. *Id.* The written confession introduced into evidence left blank spaces where the petitioner’s name would appear. *Id.*, 189. The trial judge instructed the jury that the confession was not evidence against the petitioner and could only be used against the confessing co-defendant. *Id.* The Court found *Bruton* applicable. *Id.*, 192. It held: “[W]e believe that, considered as a class, redactions that replace a proper name with an obvious blank, the word ‘delete,’ a symbol, or similarly notify the jury that a name has been deleted are similar enough to *Bruton*’s unredacted confessions as to warrant the same legal results.” *Id.*, 195.

Notably, in all of its precedent cases, the Court wrote in generalities. In *Bruton*, the Court did not make a finding that the jury did (or would have) in fact improperly considered the confession. It held that the “substantial risk” of the jury disobeying a limiting instruction created the Confrontation Clause violation. In *Richardson*, the Court reasoned that an “overwhelming

probability” of instruction disregard did not exist and thus the Confrontation Clause had not been violated. And in *Gray*, the Court considered statements “as a class” that would violate the rule.

The precedent’s generalist reasoning is sensible given the difficulty of inquiry inherent to the type of issue at hand. The Court must deal in “likelihood[s]” of jury reasoning—see *Bruton*, 391 U.S. 127—for two reasons. First, jury deliberations are closed. There cannot be perfect post-conviction information about the jury’s reasoning process without deep inquiry into the conversations that occurred in the black box of the jury room. Because such inquiry is generally disfavored, the doctrine must draw its line based on what *likely* did (or will) happen, rather than attempt to determine what did (or will) happen in deliberations. See *Bruton*, 391 U.S. 126 (“*If it were true* that the jury disregarded the reference to the codefendant, no question would arise under the Confrontation Clause, because *by hypothesis* the case is treated as if the confessor made no statement inculcating the nonconfessor.” (emphasis added)).

Second, jurors may not have perfect insight into their reasoning. Even an earnest juror seeking to apply the trial court’s instruction appropriately may fail to do so. It is possible a juror would shade their determinations subconsciously. In such a case—setting aside the judiciary’s reticence to inquire into juror reasoning—the juror might state that they did not consider the confession, despite the fact that it had improperly influenced their verdict.

The precedent concerns itself with drawing bright lines that result in generally applicable rules rather than fact-specific determinations applicable only to specific cases. The Court should carry forward this jurisprudential logic in the present matter. And, although the language of precedent cases shifts somewhat, it is not necessary for the Court to become overly concerned with selection of language between *Bruton*’s “substantial risk” and *Richardson*’s “overwhelming

probability.” This is because the boundaries and intended effects of the general rule are clear and consistent when considering the three opinions in juxtaposition.

**II. The *Bruton-Richardson-Gray* line of cases draws its line at “inferentially incriminating” testimony, which requires additional trial evidence to inculcate.**

The essential distinction in the *Bruton* line of cases is the line between facially incriminatory and inferentially incriminatory evidence. The Court first established this distinction in *Richardson*. When it distinguished the facts of that case from *Bruton*, it reasoned that the confession before it “was not incriminating on its face, and became so *only when linked with evidence introduced later at trial.*” *Richardson*, 481 U.S. 208 (emphasis added). The Court explained: “[W]hile it may not always be simple for the members of a jury to obey the instruction that they disregard an incriminating inference, there does not exist the overwhelming probability of their inability to do so that is the foundation of *Bruton*’s exception to the general rule.” *Id.*

The Court in *Gray* further clarified this distinction. It stated:

We also concede that the jury must use inference to connect the statement in this redacted confession with the defendant. But inference pure and simple cannot make the critical difference, for if it did, then *Richardson* would also place outside *Bruton*’s scope confessions that use shortened first names, nicknames, descriptions as unique as the “red-haired, bearded, one-eyed man-with-a limp,” and perhaps even full names of defendants who are always known by a nickname. This Court has assumed, however, that nicknames and specific descriptions fall inside, not outside, *Bruton*’s protection.

...

The inferences at issue here involve statements that, despite redaction, obviously refer directly to someone, often obviously the defendant, and which *involve inferences that a jury ordinarily could make immediately, even were the confession the very first item introduced at trial.*

*Gray*, 523 U.S. 195 (internal citations omitted) (quoting *United States v. Grinnell Corp.*, 384 U.S. 563, 591 (1966) (Fortas, J., dissenting)) (emphasis added).

The dissent in *Gray* characterized the line similarly: “By ‘facially incriminating,’ we have meant incriminating *independent of other evidence introduced at trial.* Since the defendant’s

appearance at counsel table is not evidence, the description ‘redhaired, bearded, one-eyed man-with-a-limp,’ would be facially incriminating.” 523 U.S. 201 (Scalia, J., dissenting) (emphasis added) (internal citations omitted) (quoting *Richardson*, 481 U.S. 208–09; *Gray*, 523 U.S. 195).

The Court in *Richardson* thus drew the line for *Bruton* applicability as turning on the necessity of a linkage with trial evidence. And the Court in *Gray* identified the line as resting upon “inferences that a jury ordinarily could make immediately, even were the confession the very first item introduced at trial.” The dissent’s characterization—“incriminating independent of other evidence introduced at trial”—makes precisely the same point (though perhaps more succinctly). The majority in *Richardson* and all nine justices in *Gray* were thus in agreement: if a confession is immediately incriminating independent of other trial evidence, *Bruton* applies.

The parties’ briefing and arguments, in contrast, call for the Court to diverge from this clear line. The petitioner, unsurprisingly, reads the precedent broadly. By the petitioner’s reading, the *Bruton* cases teach that “[t]he admission of a redacted confession violates a defendant’s confrontation right where the jury is likely to infer that the confessing defendant named the nonconfessing defendant as an accomplice.” Pet’r’s Br. 15. He would have the Court incorporate “surrounding context of the trial” into its analysis. *Id.*, 14. The petitioner’s analysis, in fact, calls for courts to consider the evidence introduced at trial, or—in a more modest proposal—the evidence the government would seek to introduce at trial. *See id.*, 32.

The petitioner is correct that a “true four-corners” approach to *Bruton* analysis of a redacted confession would be drastically underinclusive. *See* Pet’r’s Br. 33–34. But for the Court to accept the petitioner’s rule, it would need to discard a huge swath of its precedent. The petitioner’s difficulty is that his call for “context” is really a call for evidence introduced at trial (or, alternatively, evidence the government indicates it will introduce at trial). The Court, though,

has repeatedly and explicitly stated that evidence introduced at trial is outside of *Bruton*'s scope. Because of the destabilizing risks inherent in drastic and sudden derogation of precedent caselaw, the Court should decline to adopt the line proposed by the petitioner.

The respondent's proposed line, though more modest than petitioner's, also misses the mark. The United States proposes a line that is drawn closely around the three precedent cases. *See* Resp't's Br. 13 ("[Precedent] singles out a particular type of statement deemed so inflammatory that a jury should not see it even with a limiting instruction: namely, a codefendant's out-of-court confession that facially implicates the defendant by directly naming him, using an equivalently personalized descriptor, or including an explicit and obvious redaction."). Although this rule accounts for the facts of the precedent, it does no more. The difficulty with the United States position is that it accounts for the evidentiary/non-evidentiary inferential line by treating it as apparent dicta. *See id.*, 26 (comparing the facts of the present case to those each of *Bruton*, *Richardson*, and *Gray*). But confining the precedent cases to their facts would erase the caselaw's neat and clearly explicated line. Under the respondent's rule, the non-confessing defendant would have no recourse against an inference easily drawn from a source of knowledge or intuition that does not fall within one of the three proposed buckets.

Such erasure would create a windfall for prosecuting attorneys and degrade the coherence of the law. It would sacrifice the Confrontation Clause's substance for a test of only technical significance. The Court should decline to adopt the respondent's proposed line. Instead, it should honor its precedent and apply *Bruton* to all co-defendant confessions that create substantial risk of immediately inculcating non-confessing defendants based on inferences not derived from trial evidence.

### III. “Practical effects” illustrate the appropriate application of the *Bruton* rule.

Although the precedent’s line is formally clean, it is also pragmatic. The Court has explicitly grounded its determinations on a set of practical policy considerations. The primary considerations appearing in the precedent are: avoiding unconflicted incrimination of the non-confessing defendant; limiting expenditure of resources necessary to apply the rule; preserving joint trials where appropriate; creating a predictable regime for litigants; and upholding the jury’s truth-seeking role.

The rule’s efficacy in protecting the non-confessing codefendant is central to precedential reasoning. In *Bruton*, the Court noted concern that “introduction of Evans’ confession added substantial, perhaps even critical, weight to the Government’s case in a form not subject to cross examination.” 391 U.S. 127–28. The Court acknowledged the general presumption that jurors will follow their instructions but elaborated on its rule’s central animating consideration. “[T]here are some contexts in which the risk that the jury will not, or cannot follow instructions is so great, and the consequences of failure so vital to the defendant, that the practical and human limitations of the jury system cannot be ignored.” *Id.*, 135. *See also, Richardson*, 481 U.S. 208 (“[A]t the time that confession was introduced there was not the slightest doubt that it would prove ‘powerfully incriminating.’” (quoting *Bruton*, 391 U.S. 135)); *Gray*, 523 U.S. 193 (“To replace the words ‘Sam Jones’ with an obvious blank will not likely fool anyone.”).

Jurors receiving an accusation against the “red-haired, bearded, one-eyed man-with-a limp” sitting at counsel table could not be expected to disregard the transcendent knowledge of an inference that needing no evidence in its support. In contrast, because inferentially incriminating confessions would require jurors to “enter[] onto the path of inference” before coming to a conclusion adverse to the defendant, *see Richardson*, 481 U.S. 208, a jury

instruction is sufficiently effective. Where jurors would need to proactively piece together the implications of various pieces of evidence admitted into evidence, the risk is much reduced. Jurors might heed the instruction before beginning the cognitive trip down the inferential path available to them.

The precedent is also concerned with the expenditure of resources used to resolve Confrontation Clause problems. This concern has been with the Court since *Bruton*. There, the Court acknowledged that joint trials “conserve state funds, diminish inconvenience . . . , and avoid delays.” 391 U.S. 134. The Court in *Richardson* additionally explained that an extensive pretrial hearing would be “time consuming.” 481 U.S. 209. The interest is not absolute, however. In *Bruton*, the Court balanced efficiency against “fundamental principles of constitutional liberty” protected by the Confrontation Clause and found the fundamental principles won out. 391 U.S. 134 (quoting *People v. Fisher*, 249 N.Y. 419, 432 (1928) (Lehman, J., dissenting)).

There is also interest in joint trials beyond judicial efficiency and preservation of resources. Joint trials ensure that the government is not required to put its case on multiple times; victims need not repeatedly testify and be subjected to inconvenience and—sometimes—additional trauma; and that principles of fairness are supported by joint trials. *Richardson*, 481 U.S. 210. Where a joint trial is unavailable, later-tried defendants have a better understanding of how the government plans to present its case. *Id.* And, without joint trials, there is a greater risk of inconsistent verdicts creating “scandal and inequity.” *Id.*

The precedent is also concerned with drawing clean lines. *See supra*, Part I. This interest reinforces the aforementioned interest in conservation of judicial resources. Where the line is cleanly and predictably applied, courts are more likely to apply it appropriately and accurately. A

clear line should thus ensure less judicial resources are expended litigating *Bruton* issues during the trial stage and on appeal. *See Richardson*, 481 U.S. 209. *See also, Gray* 523 U.S. 197.

Finally, the precedent cases are interested in ensuring that the truth-seeking function of the courts is appropriately honored. Co-defendant confessions are highly prejudicial but questionably probative. *See Bruton*, 391 U.S. 136. The confessing co-defendant has too great an interest in shifting the blame for their conduct to be reliable without facing the crucible of cross examination. *See id.* Thus, the Confrontation Clause’s protection ensures accurate fact finding.

The parties’ proposed rules honor the interests identified by precedent to varying degrees. The petitioner’s rule, unsurprisingly, would ensure that the non-confessing defendant will have their Confrontation Clause right fully vindicated. The same cannot be said for the rule proposed by the respondent. Under the respondent’s reading of precedent, implication of the defendant is only prohibited if by name, description, or “explicit and obvious redaction.” Were the Court to adopt the respondent’s rule, it would rip the heart from the Confrontation Clause, at least for that subset of cases (including Mr. Samia’s prosecution) that do not fall neatly into the three categories proposed by the respondent. Failure to appropriately account for this interest counsels strongly against adoption of the respondent’s rule.

The interest in appropriate limitation on resource expenditure, meanwhile, goes unmet by the petitioner’s proposed rule. It is true that the parties and their *amici* have significantly disputed the extent to which a more- or less-inclusive rule would burden trial courts. Disappointingly, the briefing and arguments do not clarify the empirical question of impact on trial court resources. The petitioner has rightly argued that the government should be assigned the burden of demonstrating any difficulties of administrability that would flow from an overly inclusive rule. Transcript of Oral Argument, at 107. And the respondent’s evidence on that issue ultimately

amounts to a case anecdote—*see id.*, 96—and a lengthy list of state executives that oppose the petitioner’s rule. *See id.*, 95–97; *see also*, Amici Curiae Br. for Pennsylvania, Alabama, et al. in Support of Resp’t. Despite this minimal showing, it is probably enough to defeat the petitioner’s proposed rule (at least as to this particular interest). The roomy “surrounding context” standard is not a standard at all. It would create potential for near-endless litigation of *Bruton* issues. And whether it took the form of a pre-trial hearing, a post-verdict motion, or a post-conviction appeal, it is precisely the danger with which the *Richardson* Court was concerned.

The respondent’s rule does not suffer from this same flaw. Its categorical simplicity does indeed create a clean line. And, for the same reason, the respondent’s rule would not create undue litigation. But it is not necessarily a virtue that the respondent’s rule would ensure a multitude of joint trials. The Court in *Bruton*, after all, balanced the interest in joint trials against the protection of the confrontation clause right. And the *Richardson* Court concerned itself with “reasonable practical accommodation” of competing interests. The respondent’s rule would accommodate the interests of efficiency and of joint trials. It would also damage other interests.

The more appropriate balance is struck by the rule enunciated in the case law and identified in this brief as limiting the court’s review to non- evidentiary information likely available to jurors. That standard confines litigation of the actual *Bruton* question to a limited set of facts allowing trial court determinations on the pleadings. The simplicity of the test limits appeals and thus limits expenditure of undue resources on appeal. There are some joint trials necessitated by the categorical rule. But as *Bruton* itself acknowledged, there comes a time when the “fundamental principles of constitutional liberty must win out.” All liberties identified in the Bill of Rights cut away at judicial efficiency to some degree. That is their purpose. After all, the Star Chamber was not criticized for its inefficiency.

It is to the truth-seeking function of the jury that we turn next. And it is here that the respondent's proposed standard truly falters. Because prosecuting attorneys would have the facial implication rule drawn only to three categories of confession—*see* Resp't's Br. 13—trial courts would be unable to consider, for instance, common knowledge or folk reasoning in their analysis of *Bruton* problems. The respondent's incomplete set of considerations would ensure unduly prejudicial information will be presented to jurors. Codefendants, eager to limit their culpability, would be allowed to accuse by any method but name, personalized description, and obvious redaction. And the defendant would have no opportunity to confront the confessor's self-interest. The respondent's rule falls short of appropriate deference to the jury's truth-seeking function.

In contrast, because the government generally retains the ability to try cases separately—despite additional expense and difficulty—the truth-seeking function of the jury trial is not damaged by the rule identified *supra*, Part II. This rule in fact enhances jury fact finding. Because the rule proposed cuts away the risk of admission of a highly prejudicial, only minimally probative codefendant confession, jurors might better weigh the evidence before them. If the confessing co-defendant is tried first, all the better: conclusion of their case would resolve the Fifth Amendment issue and they could be called to testify. The unredacted confession would be admissible against the non-confessing defendant and subject to cross examination.

Both the petitioner and the respondent have thus drawn their lines in manners failing to adequately protect the interests served by *Bruton* and its progeny. The Court should discard the petitioner's proposition of unmanageable scope. It should similarly decline to adopt the respondent's lumpy rule that would risk the jury's fact-finding capabilities and defendant's protections against unopposed accusation. Instead, the Court should hew carefully to precedent

and hold *Bruton* applicable where a confessing co-defendant implicates the defendant through a statement with a significant risk of immediate inculcation on a basis other than trial evidence.

**IV. The *Miranda* impeachment cases deal with a different set of constitutional concerns than those present in the *Bruton* line of cases.**

The respondent is correct that *Bruton*'s rule diverges from other areas of the law, in which jurors are trusted to follow limiting instructions. *See* Resp't's Br. 15. The most notably analogous of the respondent's citations for this point is *Harris v. New York*, 401 U.S. 222 (1971). There, the Court dealt with a defendant confession that was immediately inculpatory as to the defendant himself but that was substantively inadmissible under the *Miranda* doctrine. The Court held sufficient a jury instruction to consider the confession for impeachment only. *Harris*, 401 U.S. 223-224. This, on its face, seems "some oddity." *See* Transcript of Oral Argument, 20 (statement of Gorsuch, J.). But the *Bruton* context is distinguishable in two ways.

These distinguishments arise from the balance between the truth-seeking function of the jury and the value of the constitutional protection that the Court has struck in its Confrontation Clause cases. The first point deals with the truth-seeking function side of the equation. In *Bruton* the Court found that, because there were other routes to the truth available, it would be unnecessary to admit the confession and infringe the Confrontation Clause right. *See* 391 U.S. 134 ("Where viable alternatives do exist, it is deceptive to rely on the pursuit of truth to defend a clearly harmful practice."). The Court there indicated that redaction would be an appropriate route to the truth. In the present case, petitioner has persuasively argued that separate trials are an always present (though sometimes costly) alternative available to the trial court.

In contrast, the circumstances of *Harris* provide no such alternate route to the truth. There, the defendant had the right to testify in his own defense. 401 U.S. 225. He did so and testified in a manner inconsistent with his prior unwarned statement. *Id.*, 226. Importantly, in

those circumstances, counsel, the Court, the defendant—*everybody in the courtroom except the jurors*—would have been aware that the defendant’s statement was disastrously unreliable. Additionally, there were no alternative routes to the truth available: the only cure was impeachment. And the only available impeachment testimony for that point was the confession at issue. Thus, the circumstances of *Harris* did not arise under the same balance of judicial interests elucidated in *Bruton* and present in the case now before the Court.

The second reason for distinguishment exists in the extent of the “clear harm” posed. *See Bruton*, 391 U.S. 134. *Bruton* is concerned with a principle of constitutional primacy. The Confrontation Clause appears explicitly in the text of the Bill of Rights. It is central to the protections against executive overreach in the private lives of citizens. *See Bruton*, 391 U.S. 134–35 (characterizing the right to cross examination as “the age-old rule which in the past has been regarded as a fundamental principle of our jurisprudence”)(quoting *People v. Fisher*, 249 N.Y. 419, 432 (1928) (Lehman, J., dissenting)); *see also*, *Hemphill v. New York*, 142 S. Ct. 681, 690 (2022) (“One of the bedrock constitutional protections afforded to criminal defendants is the Confrontation Clause of the Sixth Amendment.”). When considering petitions arising under *Bruton*, the Court is dealing with a fundamental constitutional protection.

In contrast, the rule addressed in *Harris* does not have the same primacy. The *Miranda* rule does not appear in the text of the Fifth Amendment. And the Court has acknowledged that a *Miranda* violation is a somewhat lower incursion into a person’s rights than an outright violation of the Fifth Amendment. *See Vega v. Tekoh*, 597 U. S. \_\_\_\_, \*4 (2022) (reasoning that a *Miranda* violation is not “tantamount to a violation of the Fifth Amendment”); *see also, id.*, \*13 (“[A] violation of *Miranda* does not necessarily constitute a violation of the Constitution.”). The same point can be made via the chain of constitutional principles implicated. In the

circumstances addressed by *Harris*, only *Miranda*'s safeguards were violated. The first-order principle, compulsion, was not itself violated. This, of course, is markedly distinct from *Bruton*, which dealt directly with the "bedrock constitutional protection" of the Confrontation Clause. Because in *Bruton* the truth-seeking interest is lower and the constitutional concern is greater than they are in *Harris*, the circumstances are readily distinguishable. It is thus sensible that the two lines of jurisprudence should diverge.

**V. Application of the rule established above should result in a determination that the trial court erred by admitting the confession in a joint trial of the petitioner.**

For the reasons outlined, the Court should adopt neither the petitioner's nor the respondent's proposed rule. Instead, the Court should adopt the rule derived from its precedent: where a nontestifying co-defendant's confession poses a high risk of immediately inculcating the defendant without the aid of additional trial evidence, the Confrontation Clause concern cannot be cured by a limiting instruction. In making *Bruton* determinations, courts should be empowered to consider: the four corners of the confession itself; information that would typically appear in a case caption or indictment, such as a person's name, their nickname, or the number of people involved in the crime; and any other information that would be otherwise apparent to jurors independent of the evidentiary presentation at trial, such as the physical appearance of the defendant in the courtroom, common sense intuitions, or popular knowledge.

Applying this rule to the case before the Court should result in a determination that the district court erred by admitting the confession in the joint trial of the petitioner and that the court of appeals erred in upholding the conviction. This is true for three reasons. First, the confession immediately inculcates "another person" whose identity can be determined by a glance at the case caption or the indictment. Second, the jury would be likely to intuit from common sense that the government charged the case consistent with its smoking-gun confession.

And, third, popular knowledge of police practice would allow jurors to discern that the law enforcement officer questioning Mr. Stillwell almost certainly asked follow up questions to determine the identity of the “[o]ther person” and evaluate the appropriateness of charging respondent in the manner reflected by the indictment.

#### CONCLUSION

The Court should thus hold that where a nontestifying co-defendant’s confession poses a high risk of immediately inculcating the defendant without the aid of additional trial evidence, the Confrontation Clause issue cannot be resolved by a limiting instruction alone. In making *Bruton* determinations, courts should be empowered to consider: the four corners of the confession itself; information that would typically appear in a case caption or indictment, such as a person’s name, their nickname, or the number of people involved in the crime; and any other information that would be otherwise apparent to jurors independent of the evidentiary presentation at trial, such as the physical appearance of the defendant in the courtroom, common sense intuitions, or popular knowledge. Application of that rule to the present case should result in a reversal of petitioner’s conviction.

## Applicant Details

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Contact Phone Number	917-993-4345

## Applicant Education

BA/BS From	Mount Holyoke College
Date of BA/BS	May 2018
JD/LLB From	New York University School of Law
	<a href="https://www.law.nyu.edu">https://www.law.nyu.edu</a>
Date of JD/LLB	May 17, 2024
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Review of Law & Social Change
Moot Court Experience	No

## Bar Admission

## Prior Judicial Experience

Judicial Internships/Externships	No
Post-graduate Judicial Law Clerk	No

## Specialized Work Experience

### Recommenders

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**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

June 10, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I am a rising third-year law student at New York University School of Law, where I am a Senior Articles Editor for the *Review of Law & Social Change*. I am applying for a clerkship in your chambers for the 2024-2025 term, and any subsequent term. I am particularly interested in clerking for you given my ties to Virginia, where my family still lives. As an aspiring civil rights litigator who thrives in dynamic workplaces, I believe I would make a valuable addition to your chambers.

Since coming to NYU Law, I have spent my time honing the legal research and writing abilities that I believe will make me an invaluable judicial clerk. During my 1L summer clerkship with the Orleans Public Defenders, I learned how to quickly draft successful motions and thoroughly review thousands of pages of discovery, summarizing them in comprehensive discovery digests. My work with the NYU-Yale American Indian Sovereignty Project allowed me to sharpen my substantive cite-checking skills as I helped prepare an amicus brief discussing the history of the trust doctrine in *Arizona v. Navajo Nation*, which is pending before the Supreme Court. Before law school, I worked for two years at the Brennan Center for Justice. As the Special Assistant to the Justice Program director, I learned how to write reports and speeches quickly yet adeptly, adapting my tone and style to best meet the needs of my employer. Lastly, my Fulbright Research Fellowship taught me how to manage projects without supervision and work with diverse constituents.

Enclosed please find my resume, law school transcript, and writing sample. Written recommendations will follow from:

- Congressman Hakeem Jeffries and Professor Debo Adegbile, with whom I took Professional Responsibility (debo.adegbile@wilmerhale.com and (212) 965-6717).
- Professor Kim Taylor-Thompson, Professor of Law Emerita at NYU School of Law, with whom I took Criminal Law (kim.taylor.thompson@nyu.edu and (914) 720-5827).
- Professor Emily Sack, Visiting Professor at NYU School of Law, with whom I took Domestic Violence Law (ejs2163@nyu.edu and (401) 359-4480).
- Ms. Abbee Cox, Staff Attorney at the Orleans Public Defenders and my 1L summer supervisor (abbeecox@gmail.com and (580) 704-6865).

Please let me know if I can provide any additional information. I can be reached by phone at (917) 993-4345, or by email at rs6700@nyu.edu. I would welcome the opportunity to interview with you and look forward to hearing from you soon.

Respectfully,

/s/

Ruth Sangree

**RUTH SANGREE** (she/her)

rs6700@nyu.edu • 917-993-4345 • 318 6<sup>th</sup> St, Apt. 9, Brooklyn NY 11215

**EDUCATION**

**NEW YORK UNIVERSITY SCHOOL OF LAW**, New York, NY

Candidate for J.D., May 2024

Honors: *Review of Law & Social Change*, Senior Articles Editor

Activities: Disability Rights and Justice Clinic, Student Advocate (Fall 2023)  
OUTLaw, Public Interest Professional Development Chair  
Defender Collective, Board Member

**MOUNT HOLYOKE COLLEGE**, South Hadley, MA

B.A., History and Politics, May 2018

**EXPERIENCE**

**BROOKLYN DEFENDER SERVICES**, Brooklyn, NY

*Legal Intern, Integrated Defense Practice*, June 2023 – August 2023

Interview clients, prepare client affidavits, draft motions, and research novel legal issues in family and criminal law. Help attorneys prepare for hearings by preparing witnesses, drafting direct and cross-examinations, and reviewing case records.

**PROFESSOR KENJI YOSHINO, NYU SCHOOL OF LAW**, New York, NY

*Research Assistant*, January 2023 – May 2023

Contributed to research-backed projects to advance the law school's efforts on diversity and inclusion.

**NYU-YALE AMERICAN INDIAN SOVEREIGNTY PROJECT**, New York, NY

*Student Researcher*, September 2022 – Present

Provide research and drafting support for amicus briefs relating to federal Indian law in cases before the Supreme Court.

**PUBLIC JUSTICE**, Washington, DC

*General Litigation Extern*, September 2022 – December 2022

Assisted with developing cases in federal courts focused on ending the criminalization of poverty. Authored a memorandum on challenges to court-imposed counsel fees via the Excessive Fines Clause. Drafted FOIA requests to federal agencies.

**ORLEANS PUBLIC DEFENDERS**, New Orleans, LA

*Summer Law Clerk*, May 2022 – August 2022

Drafted successful bond reduction and pretrial motions. Reviewed and summarized discovery documents and body camera footage. Assisted attorneys at arraignments and substantive motions hearings. Coordinated post-release services for clients in collaboration with the office's client services team. Interviewed and provided support to currently incarcerated clients. Organized a fundraiser for the office's client book fund.

**NYU PAROLE ADVOCACY PROJECT**, New York, NY

*Parole Advocate*, February 2022 – Present

Support clients as they prepare for appearances before the New York State Parole Board. Assemble Parole Packets, write advocacy letters, conduct mock interviews, and connect clients to re-entry services and appellate representation.

**FULBRIGHT KOREA**, Seoul, South Korea

*Fulbright Research Scholar*, February 2021 – December 2021

Conducted an independent research project on the South Korean "comfort women" (wartime sexual slavery) redress movement and its impact on broader South Korean feminist activism, vis-à-vis paths for legal recourse and restorative justice.

**BRENNAN CENTER FOR JUSTICE**, New York, NY

*Special Assistant to the Director, Justice Program*, June 2018 – July 2020

Provide research, drafting, and cite-checking support for major Program publications focused on criminal justice reform. Wrote daily briefings on national and local developments in criminal legal reform. Wrote speeches and prepared talking points for Director to use in national media appearances. Authored blogs and op-eds for the Center's website and external publications. Developed a dashboard tracking COVID-19's impact on incarcerated individuals.

**ADDITIONAL INFORMATION**

Conversational in Korean. Enjoy baking and hiking.

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 Page: 1 of 1

New York University  
 Beginning of School of Law Record

Fall 2020

School of Law Juris Doctor Major: Law				
Lawyering (Year)		LAW-LW 10687	2.5	CR
Instructor:	Shirley Lin			
Criminal Law		LAW-LW 11147	4.0	B
Instructor:	Kim A Taylor-Thompson			
Torts		LAW-LW 11275	4.0	B
Instructor:	Mark A Geistfeld			
Procedure		LAW-LW 11650	5.0	B
Instructor:	Troy A McKenzie			
1L Reading Group		LAW-LW 12339	0.0	CR
Topic:	Reading Legal News			
Instructor:	Helen Hershkoff			
		AHRS	EHSR	
Current		15.5	15.5	
Cumulative		15.5	15.5	

Spring 2022

School of Law Juris Doctor Major: Law				
Lawyering (Year)		LAW-LW 10687	2.5	CR
Instructor:	Edith Beerdsen			
Legislation and the Regulatory State		LAW-LW 10925	4.0	B
Instructor:	Samuel J Rascoff			
Contracts		LAW-LW 11672	4.0	B
Instructor:	Clayton P Gillette			
1L Reading Group		LAW-LW 12339	0.0	CR
Instructor:	Catherine M Sharkey			
Criminal Procedure: Police Practices		LAW-LW 12697	4.0	B
Instructor:	Barry E Friedman			
Financial Concepts for Lawyers		LAW-LW 12722	0.0	CR
		AHRS	EHSR	
Current		14.5	14.5	
Cumulative		30.0	30.0	

Fall 2022

School of Law Juris Doctor Major: Law				
Professional Responsibility and the Regulation of Lawyers		LAW-LW 11479	2.0	A
Instructor:	Hakeem Sakou Jeffries Debo Patrick Adegbile			
Evidence		LAW-LW 11607	4.0	B
Instructor:	Daniel J Capra			
Directed Research Option B		LAW-LW 12638	1.0	A
Instructor:	Maggie Blackhawk			
Directed Research Option B		LAW-LW 12638	1.0	IP
Instructor:	Helen Hershkoff			
Domestic Violence Law Seminar		LAW-LW 12718	2.0	A-
Instructor:	Emily Joan Sack			
Reproductive Rights and Justice: A Comparative Perspective Seminar		LAW-LW 12768	2.0	A-
Instructor:	Chao-ju Chen			
		AHRS	EHSR	
Current		12.0	11.0	
Cumulative		42.0	41.0	

Spring 2023

School of Law Juris Doctor Major: Law				
Employment Law		LAW-LW 10259	4.0	B
Instructor:	Cynthia L Estlund			
Racial Justice Colloquium		LAW-LW 10540	2.0	A
Instructor:	Deborah Archer			
Examining Disability Rights and Centering		LAW-LW 10983	2.0	A
Instructor:	Vincent Southerland			
Constitutional Law		LAW-LW 11702	4.0	B+
Instructor:	Prianka Nair			
Directed Research Option B		LAW-LW 12638	2.0	A
Instructor:	Peter Milo Shane			
	Maggie Blackhawk			
		AHRS	EHSR	
Current		14.0	14.0	
Cumulative		56.0	55.0	
Staff Editor - Review of Law & Social Change 2022-2023				

End of School of Law Record

TRANSCRIPT ADDENDUM FOR NYU SCHOOL OF LAW  
JD CLASS OF 2023 AND LATER & LLM STUDENTS

*I certify that this is a true and accurate representation of my NYU School of Law transcript.*

Grading Guidelines

Grading guidelines for JD and LLM students were adopted by the faculty effective fall 2008. These guidelines represented the faculty's collective judgment that ordinarily the distribution of grades in any course will be within the limits suggested. An A + grade was also added.

Effective fall 2020, the first-year J.D. grading curve has been amended to remove the previous requirement of a mandatory percentage of B minus grades. B minus grades are now permitted in the J.D. first year at 0-8% but are no longer required. This change in the grading curve was proposed by the SBA and then endorsed by the Executive Committee and adopted by the faculty. Grades for JD and LLM students in upper-level courses continue to be governed by a discretionary curve in which B minus grades are permitted at 4-11% (target 7-8%).

<b>First-Year JD (Mandatory)</b>	<b>All other JD and LLM (Non-Mandatory)</b>
A+: 0-2% (target = 1%) (see note 1 below)	A+: 0-2% (target = 1%) (see note 1 below)
A: 7-13% (target = 10%)	A: 7-13% (target = 10%)
A-: 16-24% (target = 20%)	A-: 16-24% (target = 20%)
<b>Maximum for A tier = 31%</b>	<b>Maximum for A tier = 31%</b>
B+: 22-30% (target = 26%)	B+: 22-30% (target = 26%)
<b>Maximum grades above B = 57%</b>	<b>Maximum grades above B = 57%</b>
B: remainder	B: remainder
B-: 0-8%*	B-: 4-11% (target = 7-8%)
C/D/F: 0-5%	C/D/F: 0-5%

The guidelines for first-year JD courses are mandatory and binding on faculty members; again noting that a mandatory percentage of B minus grades are no longer required. In addition, the guidelines with respect to the A+ grade are mandatory in all courses. In all other cases, the guidelines are only advisory.

With the exception of the A+ rules, the guidelines do not apply at all to seminar courses, defined for this purpose to mean any course in which there are fewer than 28 students.

In classes in which credit/fail grades are permitted, these percentages should be calculated only using students taking the course for a letter grade. If there are fewer than 28 students taking the course for a letter grade, the guidelines do not apply.

Important Notes

1. The cap on the A+ grade is mandatory for all courses. However, at least one A+ can be awarded in any course. These rules apply even in courses, such as seminars, where fewer than 28 students are enrolled.
2. The percentages above are based on the number of individual grades given – not a raw percentage of the total number of students in the class.
3. Normal statistical rounding rules apply for all purposes, so that percentages will be rounded up if they are above .5, and down if they are .5 or below. This means that, for example, in a typical first-year class of 89 students, 2 A+ grades could be awarded.
4. As of fall 2020, there is no mandatory percentage of B minus grades for first-year classes.